



सत्यमेव जयते

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

File No.CC-11011(11)/2/2022-O/o CCPD

**Case No. 12808/1011/2021**

### Complainant:

Shri Anjani Lal Prajapati,  
Bada Bharwara, Viraj Khand-2,  
Gomti Nagar, Lucknow  
Uttar Pradesh – 226 010.

— 1231641

Versus

### Respondent:

National Bank for Agriculture & Rural Development,  
(Through the Chairman-cum-Managing Director),  
Plot No.C-24, G-Block, Bandra-Kurla Complex,  
Bandra (E), Mumbai – 400051

— 1231642

Disability: 70% locomotor (Both Legs)

### Gist of Complaint:

Shri Anjani Lal Prajapati, the complainant submitted that National Bank for Agriculture and Rural Development vide its Recruitment Advertisement No.2/Grade A/2021-22 has invited applications for the post of Assistant Manager in Grade 'A' in Rural Development Banking Service (RDBS) / Rajbhasha Service in NABARD. He submitted that NABARD has violated Article 20 of RPwD Act, 2016 by not giving reservation to Both Legs affected (BL) and Both Arms affected (BA) persons with disabilities. He submitted that BL and BA affected persons inspite of having the required educational/ technical qualification were denied jobs of Assistant Managers (RDBS) having 148 vacancies. The applicant has requested to identify the posts of locomotor disability as per functional requirement only as per the definition of category C mentioned under Section 20, 33(ii) and 34(1) of RPwD Act 2016. The Complainant submitted that the Respondent should follow the guidelines and provisions given in the RPwD Act 2016. He has also requested for correction and cancellation of advertisement issued violating the guidelines and provisions of RPwD Act, 2016.

*[Signature]*

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5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892275  
5<sup>th</sup> Floor, NISD Bhawan, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel. No.011-20892275

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाइल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

2. The matter has been taken with the CMD, NBARD vide letter of this Court dated 02.08.2021. File No.CC-11011(11)/2/2022-O/o CCPD

3. The Respondent vide its reply dated 01.09.2021 submitted that the matter with similar facts and nature is already sub judice before the Hon'ble Supreme Court of India, W.P.(C) 1337 of 2018, Anuj Goyal Versus Union of India & Ors. In terms of Section 33 of the Rights of Persons with Disabilities Act, 2016, NABARD has taken the following steps:

- a. The number of posts for the persons with Benchmark Disability (PwBD) candidates are being identified in terms of Government of India guidelines.
- b. In terms of department of financial services, Ministry of Finance, Govt. of India instructions, dated 31.01.2019 forwarding the department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment OM No.34-16/2018-DD.III dated 12.12.2018, a committee has been constituted in NABARD for identifying the posts in the Bank that can be held by PwBD candidates, as stipulated under 'The Rights of Persons with Disabilities (RPwD) Act, 2016. As per the recommendations of the committee, vacancies have been reserved for PwBD under various categories for all the posts in NABARD. That thereafter the NABARD has identified different posts for the different category of staffs.
- c. A committee was constituted on 22.04.2019. The next review of identified posts shall be taken up before April 2022.

As envisaged in Section 34 of RPwD Act, 2016, there is a ratio to the extent of 4% for PwBD candidates which is adhered to by NABARD. Further all the guidelines in terms of OM No. 36035/02/2017-Estt(res) dated 15.01.2018 are being followed and complied with likewise "Equal Opportunity Policy" has been initiated and is under progress. Further, "Grievance Redressal Committee" for PwBD employees has been constituted in NABARD.

The Respondent submitted that it would be a challenging situation to a parson with benchmark disabilities like Both Arms affected to cope with arduous tasks being attended by an officer in NABARD in RDBS due to involvement in field duties in rural areas that involves frequent traveling and visits to remote inaccessible rural corners of the country. The alleged discrimination in employment as stated in the complaint is incorrect and unsubstantiated. The persons with both legs and both arms affected have not been considered for RDBS services not due to



discrimination but for the reasons explained hereinabove above. Persons with lesser disabilities are recruited in RDBS. Also NABARD recruits officers with both legs affected in Rajbhasha services in which job profile is related to translation, involves minimal movements and is suitable for such candidates.

4. The complainant vide his rejoinder dated 08.09.2021 submitted that the Respondent's submission that a W.P. (C) 1337 of 2018 has been filed by Shri Anuj Goel versus Union of India & Ors. was filed during 2018 and it is a personal matter and nothing to do with this case. The complaint in question is of the year 2021 and is of LD Both Legs Affected Divyang whereas Shri Anuj Goyal is a person with Both Arms affected and the case is completely different from the complaint in question. NABARD has violated the guidelines/ provisions as given below;

- i. By bypassing the provisions/mandate made in section 33(i) and (ii) of RPwD Act 2016. The expert committee constituted by the bank to identify the posts not ensured the participation and representation of all the referred differently abled persons (about 21 disabilities of categories a,b,c,d and e and about 30 other disabilities created by the bank by segregating the persons with locomotor disabilities who were affected.
- ii. Manipulated the original definition of clause (C) of Section 34 as per Respondent's wish, going beyond the provisions/mandate specified in section 33(i) of the Act for the respective category of persons with benchmark disabilities specified in section 34 of the Act.
- iii. By arbitrarily distorting and manipulating the original definition of category C of section 34 of the Act by dividing loco-motor disability into several sub-classes such as OL, BL, OA, BLA, OLA etc.

The complainant has submitted that there a good number of persons with disabilities who have shown their caliber in their respective fields in spite of their disabilities.

5. **Hearing:** An hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 21.12.2021.

6. Both parties were absent during the hearing.

**Observations and Recommendations:-**

7. Complainant submits that the Respondent issued notification for the post of Assistant Manager (Rajbhasha). The post was not identified suitable for Divyangjan with 'Both Arms and Both Legs' category.

8. Respondent submits that considering the difficulties attached with the post, 'Both Arms and Both Legs' category was not identified suitable for the post. Complainant further submitted that another case, Anuj Goel v. Union of India, with similar facts is pending before Hon'ble Supreme Court.

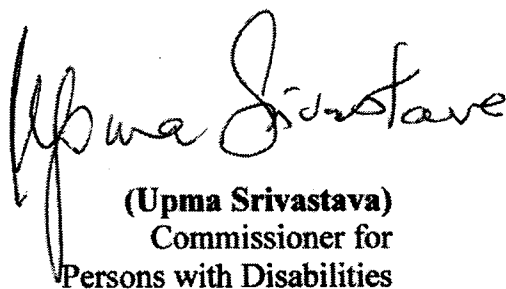
9. This Court concludes that there is clear violation of the DEPwD/MSJE list of identified posts notification dated 04.01.2021. Post of Assistant Manager (Rajbhasha) is identified as suitable for the 'both arms and both legs' category. Submission of the respondent that this category was not identified suitable for the posts 'both arms and both legs' category lacks merit. Notification dated 04.01.2021 has published a list of identified posts after due diligence and deliberation. Note 6 of notification dated 04.01.2021 laid down that the list is principle list with respect to post identified suitable for Divyangjan. This list has to be adhered to mandatorily. Government establishments are not allowed to diminish the range of identified categories i.e. no government establishment can exclude a category which is identified as suitable in the list.

10. Respondent has not submitted any documents to prove that the pending case and the present complaint are similar in nature. It is also important to note that the case was filed in the Hon'ble Supreme Court in 2018 whereas the notification was published and came into force in 2021. Therefore, this Court presumes that the facts in pending case and the present complainant are not similar.

11. This Court recommends that the respondent shall issue corrigendum amending the original advertisement and shall give opportunity to Divyangjan with 'both arms and both legs' to apply for the posts.

12. The case is disposed off.

Dated: 09.03.2022

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities





सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 12930/1022/2021

शिकायतकर्ता : श्री राहुल कुमार  
कनिष्ठ अभियंता  
संकेत (एसएसई/सिंगनल/बीसीटी)  
मुंबई मंडल, पश्चिम रेलवे  
Email: [jerahul.raj@gmail.com](mailto:jerahul.raj@gmail.com)

— 1231653

प्रतिवादी : मंडल रेल प्रबंधक (पी)  
कार्यालय मंडल रेल प्रबंधक  
मुंबई मंडल, पश्चिम रेलवे,  
मुंबई  
ई-मेल: [gm@wr.railnet.gov.in](mailto:gm@wr.railnet.gov.in)  
फोन नंबर: 022-22005670, 22037395

— 1231654

### GIST OF COMPLAINT:

शिकायतकर्ता का अपनी शिकायत में कहना है कि वह कनिष्ठ अभियंता (संकेत) के पद पर मुंबई मंडल, पश्चिम रेलवे में एसएसई/एसआईजी/बीसीटी एमएक्स के अंतर्गत कार्यरत है। शिकायतकर्ता ने मुंबई मंडल से स्थानांतरण के लिए आवेदन पत्र दिया था। शिकायतकर्ता का कहना है कि उनका अनापति प्रमाण पत्र 20.12.2018 को आने के बाद भी उन्हें मुंबई से स्थानांतरण नहीं किया गया और पुनः सहायक कार्मिक अधिकारी, पश्चिम रेलवे, मुंबई के द्वारा 23.12.2020 को पुनः वैधीकरण के लिए भेजा गया।

पुर्व मध्य रेल, हाजीपुर के द्वारा सोनपुर मंडल के लिए अनापति प्रमाण पत्र पश्चिम रेलवे मुंबई का 06.07.2021 का भेजा गया जिसकी वैधता छः माह तक है परंतु दिनांक 03.10.2021 तक उन्हें मुंबई से राहत नहीं किया गया जिसके कारण पुर्व मध्य रेलवे, सोनपुर मंडल में उनकी वरीयता का भी नुकसान होने की संभावना है। शिकायतकर्ता 45 प्रतिशत लोकोमोटर दिव्यांगजन है तथा उनके घर में उनके माता पिता उनकी पत्नी एवं एक छोटा बच्चा है जो गाँव में रहते हैं जिसके कारण उन्हें पारिवारिक जिम्मेदारिया निभाने में काफी कठिनाई का सामना करना पड़ रहा है।

अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उपयुक्त सभी तथ्यों पर विचार-विमर्श करते हुए उनका स्थानांतरण अतिशिघ्र करके उन्हें पुर्व मध्य रेल, सोनपुर मंडल में योगदान हेतु रिलीव करने की कृपा की जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 12.10.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. In response, DRM (E) BCT, vide letter dated 10.11.2021, submitted that Shri Rahul JE/SIG/BCT had applied for Danapur Division for which NOC had not been granted earlier, but however acceptance has been received from GM (P) ECR/HJP on re-validation to accommodate them at Sonpur Division. Accordingly, his case was put up to competent authority i.e. Sr. DSTE (Co) for relieving purpose but the same has not been considered now due to large no. of vacancy but to be decided on posting order of new JE (Appr. JE) who are under training.

5वीं मंजिल, एनआईएसडी भवन, प्लॉट न०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892275  
5<sup>th</sup> Floor, NISD Bhawan, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel. No.011-20892275

E-mail: [ccpd@nic.in](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://www.ccdisabilities.nic.in)

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

The respondent further submitted that 08 Appr. JE are under Apprenticeship training which will be completed in the month of Dec. 2021. The case of Shri Rahul Kumar for Inter Railway Transfer for Sonpur Division will be considered after that.

4. The complainant has submitted the rejoinder dated 24.11.2021 and submitted the following reply:

शिकायतकर्ता का अपनी शिकायत में कहना है कि डीआरएम ऑफिस के द्वारा जो जानकारी दी गई है उक्त पत्र में यह कहा गया है कि उन्हें प्रथम बार दानापुर मंडल से स्थानांतरण हेतु एनओसी जारी नहीं किया गया था जबकि उन्हें प्रथम बार में दानापुर मंडल से दिनांक 20.12.2018 को एनओसी जारी किया गया था। शिकायतकर्ता का कहना है कि मुम्बई मंडल के द्वारा रिलीव न करने के कारण एनओसी की वैधता जो कि छह माह तक होती है समाप्त हो गई।

अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उन्हें अतिशीघ्र रिलीव करने का पुनर्विचार करने की कृपा की जाए।

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 08.02.2022. The following were present:

- i) Shri Rahul Kumar – Complainant
- ii) Shri Ritesh Ranjan, Sr. DPO, BCT – Respondent

**Observations / Recommendations:**

1) This Court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

2) First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfill obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were

- a. To fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,
- b. To create barrier free environment for Persons with Disabilities,
- c. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons



3) Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –

- (a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

4) Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.

5) Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.

6) Issues related to transfer and posting to divyang employees may be divided into three categories -:

- a) Posting of divyang employee at native place,
- b) Exemption from routine transfer of divyang employee,
- c) Posting of employee who serves as care giver of divyang dependant.

#### STATUTORY PROVISIONS AND GUIDELINES

7) a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.

b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.

d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption

of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.

e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.

f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.

g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.

i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

#### ANALYSIS OF THE PROVISIONS & GUIDELINES

8) It is noteworthy that even before Section 20(5) was conceptualized, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short)



created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

9) Even in case of employee who serves as care giver of divyang dependent, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

10) Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependant is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS

11) **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

12) A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C ) 7927/2020, judgment dated 05.11.2020

13) Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

14) **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

15) This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C ) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

16) **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

17) Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

18) The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

19) In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters court does not sit as court of appeal, but court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfil the international commitments and give equal treatment to Persons with Divyangjan.

20) **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

21) Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

22) **ISSUE** – In case if employee who is care giver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

23) O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

24) It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependant'.

25) Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

**4. Women and children with disabilities.**—(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”

**16. Duty of educational institutions.**—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities

**24. Social security.**—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

**27. Rehabilitation.**—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken

services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

**38. Special provisions for persons with disabilities with high support.**—(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

**2(d) - “care-giver”** means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability.

26) Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

#### SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

27) Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble court held that the employee must be retained in Jaipur branch even after promotion.

28) Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

#### PRESENT CASE

29) Complainant submits that he is posted at Mumbai zone, Western Railways. He applied for transfer to Sonpur zone, East Central Railways. Though NOC was received but he was not transferred.

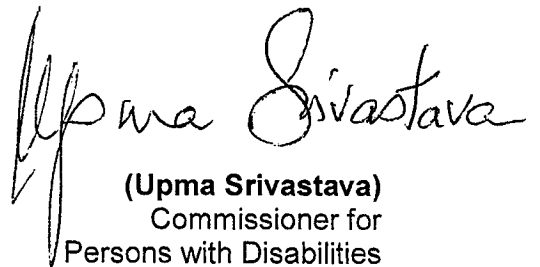


30) Respondent refuted the claim and submitted that earlier the Complainant applied for transfer to Danapur division. Later NOC was obtained to accommodate the Complainant to Sonpur division. Case of the Complainant was put up for relieving orders, but it was not considered because of lack of staff. It was decided that the Complainant's case would be considered when new Junior Engineers (JE) will join the establishment. As on the date of the Complaint, new JEs were under training which will be completed in December 2021.

31) As far as legal position is concerned, the Respondent is bound by the guidelines issued by Government of India from time to time. Respondent is bound to transfer the Complainant to Sonpur Zone, East Central Railways as laid down in O.M. No. 14017/16/2002 dated 13.03.2002 and O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T and delineated above.

32) This Court recommends that as soon as training of new JEs gets complete, Respondent shall transfer the Complainant to Sonpur Zone, East Railways. Meantime the Respondent shall apply for renewal of NOC and shall put in efforts to get it renewed before the training of new JEs gets complete

This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 10/03/2022

The respondent further submitted that 08 Apr. JE are under Apprenticeship training which will be completed in the month of Dec. 2021. The case of Shri Rahul Kumar for Inter Railway Transfer for Sonpur Division will be considered after that.

4. The complainant has submitted the rejoinder dated 24.11.2021 and submitted the following reply:

शिकायतकर्ता का अपनी शिकायत में कहना है कि डीआरएम ऑफिस के द्वारा जो जानकारी दी गई है उक्त पत्र में यह कहा गया है कि उन्हें प्रथम बार दानापुर मंडल से स्थानांतरण हेतु एनओसी जारी नहीं किया गया था जबकि उन्हें प्रथम बार में दानापुर मंडल से दिनांक 20.12.2018 को एनओसी जारी किया गया था। शिकायतकर्ता का कहना है कि मुम्बई मंडल के द्वारा रिलीव न करने के कारण एनओसी की वैधता जो कि छह माह तक होती है समाप्त हो गई।

अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उन्हें अतिशीघ्र रिलीव करने का पुनर्विचार करने की कृपा की जाए।

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 08.02.2022. The following were present:

- i) Shri Rahul Kumar – Complainant
- ii) Shri Ritesh Ranjan, Sr. DPO, BCT – Respondent

**Observations / Recommendations:**

1) This Court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

2) First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfill obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were

- a. To fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,
- b. To create barrier free environment for Persons with Disabilities,
- c. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons





सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 12858/1022/2021

Complainant : Shri Sohan Pal  
R/o G-88, Gali No. 11,  
Ganga Vihar, Delhi-110094  
Mobile No: 9990657595, 07011154699  
E-mail: [sohanpal0209@gmail.com](mailto:sohanpal0209@gmail.com)

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Respondent : The General Manager  
M/s Luminous Power Technology  
Plot No. 150, Sector-44, Gurugram  
Haryana-122003

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✓ The General Manager  
G.S. Gangwar & Associates  
1134, Tower-A, i-thum, Plot No. A-40,  
Sector-62, Noida-201301  
Phone No: 09717211123  
E-mail: [gangwar@gsganwgar.com](mailto:gangwar@gsganwgar.com)  
[himanshu.balajee@luminousindia.com](mailto:himanshu.balajee@luminousindia.com)  
Ph: 081309556639

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### GIST OF COMPLAINT:

The complainant is 75% locomotor disability working in the Luminous Power Technologies Pvt. Ltd. since 2005 in Ghaziabad Service Center. The complainant stated that they transferred him from Ghaziabad to Jammu Kashmir in 2019. The complainant have not accepted their transfer proposal yet due to his disability and divorced status. The complainant doesn't have any caretaker who can care of mine and his 9 years daughter in Jammu and Kashmir. The complainant is requested to CCPD Court to cancel his transfer proposal and request for transfer into Delhi or Gurgaon that is his nearest location.

2. The matter was taken up with the Respondent vide letter dated 01.10.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Management/respondent, G.S. Gangwar & Associates, Luminous India vide letter dated 03.11.2021, inter-alia submitted that the company is law abiding entity and keep all endeavour to respect the law of land without fail and never intended to violate any law and it is not out of place to mention herein that the respondent / management being a multinational company and belongs to social welfare apart from business and it is clear policy of the company that no business as the cost of employee and to the management, the welfare of the employee is the first priority.

The respondent further submitted that the company is incorporated and registered under the companies Act, 1956 and is having its head office at Gurugram, Haryana and having very good reputation in market as well as public at large.

The respondent further submitted that claimant was in need of job and approached to the respondent in the month of December 2006 for employment in the respondent and company after gone through the qualifications and experience of the claimant, the respondent appointed to the claimant as Assistant service Executive w.e.f. 01.01.2007 for one of its service center situated at Delhi & NCR and issued an appointment letter dated 01.01.2007 along with the other terms and condition.

The respondent further stated that appointment letter was duly acknowledged and signed by the applicant. The management company is multinational company and doing its business with ethics and social responsibilities towards the citizen and in furtherance of that management company adopts the policy of no discrimination on the any grounds like sex, religion caste etc and not only this the company used to give special privilege to the person with physical disability. The management came to know the physical disability up to 75% part polio residual paralyzed of right lower limb of the applicant, the management had offered him position of assistant service Executive without giving second thought in respect of performance etc though the applicant was not practically suitable for said position as the job profile of Assistant Service Executive is involve lot of field works.

The respondent further submitted that during the term of employment, the performance of claimant with the respondent was not up to the satisfaction of the respondent and resultantly the claimant was never promoted by the respondent due to poor performance.

The respondent further submitted that due to change in business strategy and in the competitive marketing scenario and to reduce the operating cost of the respondents company, the respondent company had decided to close down its various service centers across the India including the Delhi and NCR in the month of October 2015 step by step and further it was decided that service center shall be outsourced to the third party in the phase manner.

The respondent further submitted that after closure of the Ghaziabad service center, the management issued transfer letter in the name of the claimant in view of placement clause mentioned in the appointment letter dated 1.1.2007 and transferred the job of claimant from Ghaziabad to Jammu where the management company was operating their service centers because other locations, most of the service center were closed.

The complainant has submitted his rejoinder dated 13.11.2021, and not satisfied with comments submitted by respondent. The complainant once again requested to CCPD Court to give directive to the respondent for cancel his transfer order.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 28.12.2021. The following were present:

- i) Shri Sohan Pal – Complainant
- ii) Shri Himanshu Balajee & Shri G.S. Gangwar, Advocate – Respondent

**Observation / Recommendations:**

1. Complainant submits that earlier he was posted at Ghaziabad since date of appointment, i.e. 2007. In 2019 he was transferred to Jammu. Complainant approached this court seeking relief of cancellation of his transfer order to Jammu.






2. Respondent submits that the Complainant was appointed on the post of Assistant Service Executive in its service center in Ghaziabad. Respondent decided to shut down all its service centers in October 2015 because of change in business strategy. Complainant was transferred to Jammu. On being informed about the transfer orders, the complainant stopped coming to office instead of joining duties.

3. During online hearing Respondent informed this court that similar Complaint was filed by the Complainant before Labour Commissioner, Karampura. Before Hon'ble Labour Commissioner lump sum amount of Rs. 3.5 Lakh was offered to him. Respondent further submitted that since it has closed all its service stations in Delhi NCR region and service operations are being carried out by third independent establishment hence Respondent cannot offer job to the Complainant. Respondent also informed this Court that other than the Complainant, there were 8-10 employees who lost their jobs because of similar circumstances. Disputes with them have also been settled.

4. This Court concludes that the Complaint is not related to disability issue. Complainant was not transferred because of disability but because of a business decision which effected enabled and divyang employees alike.

5. However, this Court recommends that the Respondent may take a compassionate view and may recommend the third party to provide job to the Complainant on compassionate basis.

This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 10.03.2022



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## न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

वाद संख्या - 12907/1101/2021

### परिवादी -

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— 123/643

### प्रतिवादी -

(1) महाप्रबन्धक - उत्तर मध्य रेलवे,  
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— 123/644

(2) महाप्रबन्धक - पूर्व मध्य रेलवे,  
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### 1. परिवाद का सार -

1.1 सुश्री अल्पा यादव, म0-22, 50% चलन दिव्यांग व्यक्ति ने मिर्जापुर रेलवे स्टेशन, उत्तर मध्य रेलवे; और कोडरमा रेलवे स्टेशन, पूर्व मध्य रेलवे पर अगम्यता सम्बन्धित एक अभ्यावेदन दिनांक 22.09.2021 प्रस्तुत किया।

1.2 परिवादी का कहना था कि वे एक शोध छात्र हैं और प्रायः मिर्जापुर रेलवे स्टेशन से विनोबा भावे विश्वविद्यालय, हजारीबाग आवागमन करती हैं। मिर्जापुर रेलवे स्टेशन पर एक एस्कलेटर उपलब्ध है किन्तु वह हमेशा बन्द रहता है जिससे गम्भीर बाधाओं का सामना करना पड़ता है। इसी प्रकार कोडरमा रेलवे स्टेशन से भी विनोबा भावे विश्वविद्यालय, हजारीबाग आवागमन करती हैं। कोडरमा रेलवे स्टेशन पर भी एक लिफ्ट है जो हमेशा बन्द रहता है। परिवादी ने उक्त दोनों रेलवे स्टेशनों पर बाधारहित आवागमन और सुगम्यता के अधिकार को सुनिश्चित कराए जाने का निवेदन किया।

### 2. प्रतिवादी द्वारा प्रस्तुत उत्तर -

2.1 प्रतिवादी संख्या 1 उत्तर मध्य रेलवे ने उत्तर दिनांक 05.11.2021 में कहा कि मिर्जापुर रेलवे स्टेशन पर 02 नग एसकेलेटर (स्वचालित सीढ़ी) स्थापित है, जो कि कार्यरत है। इनके क्रियाशील स्थिति में न होने पर स्टेशन पर उपलब्ध शिकायत पुस्तिका में सम्बन्धित शिकायत अंकित की जाती है।

(Page 1 of 2)

2.2 प्रतिवादी संख्या 2 पूर्व मध्य रेलवे ने उत्तर दिनांक 09.11.2021 में कहा कि 02 नग लिफ्ट 13 यात्रियों की क्षमता वाला जोनासन कम्पनी का बना हुआ कोडरमा रेलवे स्टेशन पर स्थापित कर किया गया है। कुछ समय पूर्व बिजली आपातपयोगी प्रणाली (Power Backup System) विफल होने के कारण ये दोनों लिफ्ट परिचालन में नहीं था। अब दोनों लिफ्ट परिचालन में हैं और यात्रियों के लिए कार्यशील हैं।

### 3. परिवादी द्वारा प्रस्तुत प्रत्युत्तर -

3.1 प्रत्युत्तर दिनांक 19.11.2021 के द्वारा परिवादी ने उत्तर मध्य रेलवे का उत्तर संतोषजनक होना नहीं बताया। अपनी असंतुष्टी व्यक्त करते हुए कहा कि उत्तर मध्य रेलवे का उत्तर जवाबदेही से बचने के लिए है। ऐसी कोई भी शिकायत पुस्तिका विकलांगजन हेतु सुगम्य रूप में उपलब्ध नहीं है। स्वचालित सीढ़ी प्रायः बन्द स्थिति में रहती है। परिवादी ने यह भी कहा कि सुगम्यता हेतु रेल प्रशासन गोल-मटोल जवाब देने के स्थान पर स्वचालित सीढ़ी और लिफ्ट को नियमित रूप से संचालित करने के लिए कोई ठोस कार्य करें।

3.2 प्रत्युत्तर दिनांक 16.12.2021 में परिवादी ने पूर्व मध्य रेलवे के उत्तर को संतोषजनक बताया और आशा व्यक्त किया कि रेल प्रशासन विकलांगजन के सुगम्यता को ध्यान में रखते हुए लिफ्ट को नियमित रूप से संचालित करेगा।

### 4. अवलोकन/अनुशंसाएँ -

4.1 उपरोक्त तथ्यों के आलोक में प्रतिवादीजन को यह सलाह दी जाती है कि मिर्जापुर और कोडरमा रेलवे स्टेशनों पर लगे स्वचालित सीढ़ियों/लिफ्टों को प्रयोग हेतु निरन्तर कार्यशील रखना सुनिश्चित करें और यह भी सुनिश्चित करें कि दिव्यांग यात्रियों को रेलवे स्टेशनों पर बाधारहित आवगमन और सुगम्यता के साधन उपलब्ध हैं। दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 76 के अनुसार इस सम्बन्ध में की गई कार्यवाही से इस न्यायालय को अवगत कराएँ।

4.2 तदनुसार इस वाद का निपटारा किया जाता है।

दिनांक - 10.03.2022



(उपमा श्रीवास्तव)  
आयुक्त दिव्यांगजन





सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 12925/1022/2021

Shri Sanjay Upadhyay : Complainant  
Deputy Manager  
State Bank of India  
Email: [sanjay.upadhyay1@sbi.co.in](mailto:sanjay.upadhyay1@sbi.co.in)

—P3/657—

#### Versus

The Manager : Respondent  
State Bank of India  
Region – 3, Administrative Office,  
Sanjay Place, Agra-282002  
Email: [agmr5.zoagr@sbi.co.in](mailto:agmr5.zoagr@sbi.co.in)  
[mgrhrr3.ao5delhi@sbi.co.in](mailto:mgrhrr3.ao5delhi@sbi.co.in)

—P3/658—

#### GIST OF COMPLAINT

The complainant is an employee of State Bank of India (SBI) having 55% locomotor disability. The complainant is a native place of Mathura and residing in his own house in Mathura City. From day to day routine works, he is completely dependent on his family. The complainant further submitted that since his joining in the bank, he has been transferred in many branches of Mathura District including most of them Rural/Semi Urban branches, which were far away from his residence. However, considering the responsibility, he never hesitated to shoulder these responsibilities even in far flung areas of Mathura district even in present branch. He is posted outside Mathura City now again vide letter no. dated 29.09.2021. He has again transferred from one rural branch to other rural branch which is again far from his residence of Mathura. Despite his several requests he is not being considered for posting in Mathura City.

The complainant further submitted that there are around 15 branches within the Mathura City itself, which are nearer to his residence, where his posting can be considered for the positions as per bank norms. As the bank has found suitable him for Service Manager posting, the same may be considered in branches situated in proper Mathura City.

The complainant submitted that Corporate office Mumbai, Vide letter no. dated 07.08.2021 has clarified that as a Covid-19 preventive measure, inter-alia has provided exemption to PwDs (Divyangjan) from attending office/branch till further instructions or until any fresh instructions are issued by HR/IR Department, Corporate Centre, Mumbai. As the instructions are from HR Department, Corporate Centre, Mumbai he is requested that he may be provided exemption from attending office/branch till the fresh instructions are issued by the IR/HR Department, Corporate Centre, Mumbai, but the bank has transferred him from Sonkh branch to Mat branch as Service Manager vide letter no. dated 28.09.2021. The complainant is requested to CCPD Court to consider his representation against transfer to Mat branch, to consider in branches of Mathura City, near his residence.



2. The matter was taken up with the Respondent vide letter dated 12.10.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Regional Manager, vide letter dated 25.11.2021, submitted that the physical condition of the concerned officer the management has already taken a sympathetic view about the grievances and placed him at a branch of his convenience. The transfer orders of the officer were issued for the branch at Kosikalan Centre which is about 46 Kilometres from Mathura City and far from then place of posting of the concerned officer i.e. Sonkh Branch. Now, the officer is placed at Mat, Mathura Branch, which is almost at the same distance from Mathura vis-a-vis previous place of posting. It is also not out of place to mention that the motorable Road as well as the transportation facilities is very much available for this town from Mathura.

4. In response, the complainant filed his rejoinder by e-mail dated 15.12.2021 and submitted that misleading facts are presented before the Hon'ble Commission. Earlier his branch Sonkh was 20 KM away from his place of resident and due to support of his colleague, posted in Sonkh Branch, he was able to attend the office regularly as they were so cooperative that they were picking him up and dropping off from his residence to Branch and back. Now, the circumstances have changed. Mat branch is a rural branch and is far 30 Km far from his residence.

Further, the complainant submitted that due to his disability, age is also not support him to commute. Due to increase of weight, he is finding very much difficulty even in walking. So, it is not possible for him to commute daily to such distance from present residence. Further, he submitted that since last 10 years, he has never been at proper Centre Mathura, which is against deprivation of him rights for getting posting at Choice Place. He has always worked diligently and with utmost sincerity.

The complainant further submitted that after filing complaint in Hon'ble Commission, his controller are harassing him by some other ways & threatening him that he will be punished for filling complaint in Hon'ble Commission. The complainant once again requested to CCPD Court to please look into his case and instruct bank to grant him relief.

5. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 08.02.2022. The following were present:

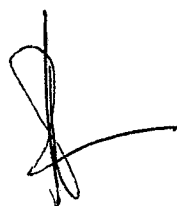
i) Shri Sanjay Upadhyay : **Complainant**

ii) Shri Devesh Mittal, Regional Mgr, SBI, Agra & Shri J.P. Singh, DGM, SBI, Agra

**Respondent**

**Observations /Recommendations:**

i) Complainant submits that presently he is posted at Mat branch. It is a rural branch in Mathura district. Earlier he was posted at Sonkh branch. It was also a rural branch in Mathura district. On 28.09.2021 he was transferred from Sonkh branch to Mat branch. Complainant prays before this Court to cancel his transfer from Sonkh to Mat branch. Reason given is that the branch was 20 K.Ms. away from home and the new branch is 30 K.Ms. away.



ii) Respondent submits that originally he was posted at Kosi Kalan branch which was 46 K.Ms. away. Considering the distance he was posted at Mat branch.

iii) During online hearing the Respondent further ensured that necessary action has been taken already, that the Complainant has been posted on deputation at Chauma on loan basis. Further, the Respondent informed that as soon as the vacancies will be available after March in Chauma, the Complainant will be adjusted in Chauma branch.

iv) This Court is satisfied with the assurance and promise made by the Respondent. This Court concludes that this Complaint may be disposed off with liberty given to the Complainant to approach this Court if in near future Respondent does not fulfill its promise made before this Court.

6. This case is disposed off.



**(Upma Srivastava)**  
Commissioner for  
Persons with Disabilities

Dated: 11.03.2022



सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 12875/1022/2021

Shri Shisant Thakur : Complainant  
Chowkidar  
East Central Railway  
Samastipur Bihar-848101  
Mobile No: 08294724452  
E-mail: [shisantthakur@gmail.com](mailto:shisantthakur@gmail.com)

— 1231651

The Divisional Railway Manager : Respondent  
Manager (Personnel)  
DDU Division  
East Central Railway  
[rajesh1saxena@live.com](mailto:rajesh1saxena@live.com)  
[saxena1rajesh@yahoo.co.in](mailto:saxena1rajesh@yahoo.co.in)

— 1231652

### GIST OF COMPLAINT:

शिकायतकर्ता का अपनी शिकायत में कहना है कि वह 40 प्रतिशत दृष्टिबाधित दिव्यांग रेल कर्मचारी मंडल रेल प्रबंधक (कार्मिक) पूर्व मध्य रेल, समस्तीपुर के अधिन चौकिदार के पद पर कार्यरत है। शिकायतकर्ता ने 25/04/2017 को स्वयं के अनुरोध पर समस्तीपुर मंडल के गृह जिला गया में स्थानान्तरण हेतु अपने कार्यालय में अग्रिम कार्यवाही करने के लिए आवेदन प्रस्तुत किया था।

शिकायतकर्ता ने दिनांक 07/05/2018 को मंडल रेल प्रबंधक (कार्मिक) समस्तीपुर से मंडल रेल प्रबंधक (कार्मिक) पं. दीन दयाल उपाध्याय को स्वीकृति से संबंधित पत्र भेजा गया। लगभग तीन वर्ष बीत जाने के उपरांत भी अभी तक पं. दीन दयाल मंडल से स्वीकृत से संबंधित एन.ओ.सी. समस्तीपुर मंडल को नहीं भेजा गया। जिसके कारण मेरा स्थानान्तरण नहीं हो सका।

शिकायतकर्ता बड़े दुख के साथ बताना चाहता है कि उनकी माँ लकवा बीमारी से ग्रसित रहने के कारण वह स्वयं से नित्य क्रिया कलाप नहीं कर पाती है। शिकायतकर्ता की पत्नी भी गठिया बीमारी से ग्रसित रहने के कारण चलने फिरने में काफी परेशानी होती है। कार्यस्थल से घर की दूरी काफी होने के कारण स्वयं, पत्नी, बच्चा एवं माता-पिता को एक साथ देखभाल करना दिव्यांग कर्मचारी के लिए लगभग असम्भव है। शिकायतकर्ता का आगे कहना है कि उनकी माता एवं पत्नी का समय से इलाज नहीं होने के कारण उनका स्वास्थ्य दिन-प्रतिदिन खराब होता जा रहा है।

अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उपयुक्त सभी तथ्यों पर विचार-विमर्श करते हुए उनका स्थानान्तरण समस्तीपुर मंडल से गृह जिला गया में करवाने की कृपा की जाए।

5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं० जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892275

5<sup>th</sup> Floor, NISD Bhawan, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel. No.011-20892275

E-mail: [ccpd@nic.in](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://www.ccdisabilities.nic.in)

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

2. The matter was taken up with the Respondent vide letter dated 20.09.2021 under Section 75 of the RPwD Act, 2016.

3. In response, DRM, East Central Railway, DDU division vide letter dated 01.012.2021 submitted that the letter dated 07.05.2018 issued by DRM (P), E.C. Railway, Samastipur with regard to on request transfer of the complainant from Samastipur to Mughalsarai Division of E.C Railway was not processed by the concerned dealer inadvertently. Hence, onwards action for issuance of No objection (Acceptance) letter to Samastipur Division of E.C. Railway could not communicated for the aforesaid reason. Further, on receipt of notice dated 20.09.2021 of the Hon'ble Commission, the lapses of concerned dealer came to the notice for which Disciplinary action has been initiated against him for his such mistake.

The respondent further submitted that presently there is no vacancy for the post of Chowkidar in this Division. Hence, in lack of vacancy the application of complainant is not feasible to be considered by the competent Authority.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 28.12.2021. The following were present:

- i) Shri Shisant Thakur – Complainant
- ii) Shri Rajesh Saxena, Advocate – Respondent

**Observation / Recommendations:**

1. This Court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

2. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfill obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were:

- a. To fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,
- b. To create barrier free environment for Persons with Disabilities,
- c. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons.

3. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law



in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –

- (a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

4. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.

5. Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.

6. Issues related to transfer and posting to divyang employees may be divided into three categories -:

- a) Posting of divyang employee at native place,
- b) Exemption from routine transfer of divyang employee,
- c) Posting of employee who serves as care giver of divyang dependant.

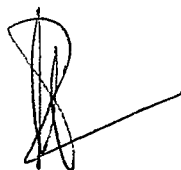
#### STATUTORY PROVISIONS AND GUIDELINES

7. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.

b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.

d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.





e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.

f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.

g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.

i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

#### ANALYSIS OF THE PROVISIONS & GUIDELINES

8. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

9. Even in case of employee who serves as care giver of divyang dependant, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

10. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependant is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric



and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS.

11. **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

12. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020.

13. Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

14. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

15. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

16. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

17. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

18. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in



PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

19. In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters court does not sit as court of appeal, but court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfil the international commitments and give equal treatment to Persons with Divyangjan.

20. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

21. Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

22. **ISSUE** – In case if employee who is care giver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

23. O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.



24. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependant'.

25. Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

**4. Women and children with disabilities.**—(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”

**16. Duty of educational institutions.**—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities.

**24. Social security.**—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

**27. Rehabilitation.**—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

**38. Special provisions for persons with disabilities with high support.**—(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

**2(d) - “care-giver”** means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability.

26. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

#### SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

27. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In





this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble court held that the employee must be retained in Jaipur branch even after promotion.

28. Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

#### **PRESENT CASE:**

29. Complainant has filed present Complaint seeking transfer to his native place. Presently he is posted at Samastipur zone. He wants to be transferred to Gaya which comes under Mugalsarai zone. Native place of the Complainant is Gaya. Complainant submits that he filed application in the office of Manager of Samastipur zone to transfer him to Gaya on 25.04.2017. His application was forwarded to Mugalsarai zone on 07.05.2018 for issuance of 'No Objection Certificate'. Even after expiry of 3 years no decision has been taken on his application.

30. Respondent submits that the concerned dealing hand who was responsible for forwarding the Complainant's application neglected in performance of his duties. Disciplinary action has been initiated against the concerned dealing hand for neglect his duties. Respondent further submits that presently there is no vacancy of Chowkidar in Gaya, hence he cannot be transferred.

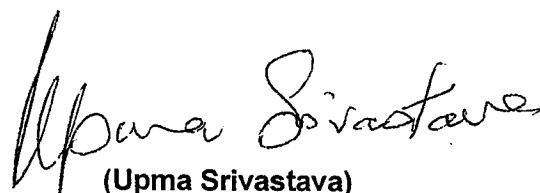
31. Respondent has failed to uphold the rights of the Complainant who is a divyang employee in the Respondent establishment. It was the utmost duty of the respondent to act in accordance with established guidelines within reasonable time. Respondent instead of taking timely action, shifted blame on one single employee and refused to transfer the Complainant to his native place.

32. Further, Respondent cited reason that no vacancy existed in Respondent establishment in Gaya hence the Complainant cannot be transferred. Application of the Complainant was kept pending in Respondent establishment for 3 long years. In those 3 years post of Chowkidar must have felt vacant for at least one time hence, plea taken by the Respondent relating to no vacancy cannot be relied upon.



33. This Court recommends that the Respondent shall transfer the Complainant to his native place in accordance with the guidelines and law delineated above.

34. This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 11.03.2022



सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 12926/1022/2021

Complainant : Shri Honey Rattan  
Manager  
Bank of Maharashtra  
Mobile No: 08091044237  
E-mail: [honeyrattan797@gmail.com](mailto:honeyrattan797@gmail.com)

—P3/649

Respondent : The Manager  
Bank of Maharashtra  
Human Resource Management Department  
Head Office  
Lokmangal, 1501, Shivajinagar, Pune-5  
Phone No: 020-25514501 to 12 and  
020-25532733 to 36  
Fax No: 020-25532581  
Email: [dgmhrm@mahabank.co.in](mailto:dgmhrm@mahabank.co.in)

—P3/650

### GIST OF COMPLAINT

The complainant is an employee of Bank of Maharashtra and working as a manager. The complainant got transfer order from Kangra Himachal Pradesh (HP) to Bhopal Zone (MP) in the month of July 2021. The complainant further submitted that he is suffering from hearing loss with both ears for which he is using hearing aids. He had given representation to his department for transfer modification on medical grounds and family problems as his parents are above 60s, as nobody is there to look after them. The complainant submitted that his request not considered even after presenting his physically handicapped certificate with 45% disability. The complainant submitted that he is very upset and worrying as he is suffering from hearing loss and botheration of his old parents as nobody is there to look after them. The complainant is requested to CCPD Court to consider his application for transfer him nearby area so that he met his parents at least once in a month.

2. The matter was taken up with the Respondent vide letter dated 12.10.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Dy. Manager, HRM, Bank of Maharashtra dated 01.11.2021 submitted that the complainant joined Chandigarh Zone of the bank on 29.04.2013 and he has completed more than 8 years of service in Chandigarh zone. It is correct that he has been transferred to Bhopal Zone vide transfer order dated 25.06.2021. The transfer has been made as per the administrative requirements of the bank.

The respondent further submitted that as per the bank transfer policy, the officers who have completed 6 years in a zone, are liable to be transferred either to outside the state, as per administrative requirement. Accordingly his tenure in Chandigarh exceeded the period of maximum stay mentioned in bank transfer policy. The respondent stated that as per regulation 47 of bank of Maharashtra 47 of bank of Maharashtra Officers service regulations, 1979 says that "Every officer is liable for transfer to any office or branch of the bank or to any place in India."

5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं० जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892275  
5<sup>th</sup> Floor, NISD Bhawan, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel. No.011-20892275

E-mail: [ccpd@nic.in](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://www.ccdisabilities.nic.in)

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

The respondent further submitted that Department of Personnel vide office memorandum dated 08.10.2018 stated that the exemption from transfer/rotational transfer, of a government employee is subject to administrative constraints. It is pertinent to note that the transfer of the complainant is effected from Chandigarh Zone after a period of approximately 8 years and that too due to administrative constraints.

The respondent further submitted that the transfer are effected by the bank based on requirements of completing mandatory rural/semi-urban posting / branch manager-ship, administrative limitation, vacancy and requirement. Taking a lenient view, bank has already retained the complainant in Chandigarh Zone for more than 8 years. The respondent further stated that bank has not discriminated the complainant as he was given promotion on 02.05.2018 and despite his promotion taking a lenient view he was retained in the place of posting.

The respondent further submitted that the bank has effected the transfer of the complainant due to the administrative constraints and is in accordance with the transfer policy of bank and in order to comply with the instructions of central vigilance commission given under communication dated 23.08.2018. Bank has not violated any of the provisions of the RPwD Act, 2016.

4. In response, the complainant has not submitted rejoinder reply issued by the Office of CCPD on 15.11.2021.

5. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 08.02.2022. The following were present:

Shri Honey Rattan: Complainant

Shri Ms. Mridul Joglekar, DGM (HRM), Bombay Head Office: Respondent

**Observations /Recommendations:**

i) Complainant submits that he was transferred from Kangra, H.P. zone to Bhopal, M. P. zone in July 2021. His native place is Jammu. Complainant prays before this Court for posting to his native place.

ii) Respondent submits that as per records available with the Respondent, the Complainant is not divyangjan. He joined in 2013 and was posted in Chandigarh zone till 2021. After 8 years of service he was posted to Bhopal zone. As per Bank's transfer policy, any person who has completed 6 years in a particular zone has to be posted out of that zone.

iii) The main point of contention between the Complainant and the Respondent is Complainant's posting to Bhopal zone which is far away from the native place i.e. Jammu. During online hearing Complainant submitted that he will be satisfied with his posting to nearby States like Punjab or Himachal Pradesh if posting in Jammu is not possible.

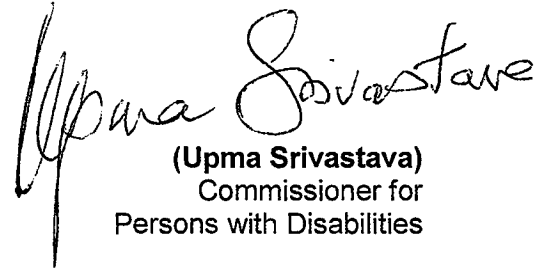
v) Respondent informed this Court that the fact of Complainant's disability was not known to the Respondent. Complainant never submitted any document like disability certificate nor informed the Respondent about his disability. Complainant also agreed with this submission of the Respondent.



v) Further, Respondent submitted that the Complainant forwarded his Disability Certificate *after filing Complaint* before this Court. Hence, fact of the Complainant's disability came to the Respondent's knowledge at a later point of time. Respondent assured this Court that Complainant will be posted to Jammu or to any other place nearby to his native place.

vi) This Court is inclined to dispose off this Complaint with liberty granted to the Complainant to approach this Court again in case the Respondent does not keep its assurances forwarded during online hearing.

6. This case is disposed off

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 11.03.2022



सत्यमेव जयते

Extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

File No.CC-11011(11)/4/2022-O/o CCPD

**Case No. 12837/1011/2021**

**In the matter of:-**

Shri Vikram Singh,  
Block-H, House No.93, A.C. Nagar,  
Near Ahuja Medical Store, NIT, Faridabad,  
Haryana – 121001

— 123/139

.....Complainant

**Versus**

Staff Selection Commission,  
(Through the Chairman)  
Block No.12, CGO Complex, New Delhi – 110003

— 13/140

.....Respondent

**Disability: 40% Cerebral Palsy with Dystonia**

### **Gist of Complaint:**

Shri Vikarm Singh submitted that he cleared the SSC-CGL-2018 Exam with Roll No. 220114639 but in the Document Verification process, the SSC Officials told him that Cerebral Palsy candidates are not eligible for the above mentioned posts and allowed him to fill preference for the following posts only, i.e. CGDA-Auditor, Assistant in MEA and Assistant in AFHQ. He submitted that as per the Official Gazette issued by GOI 2021 dated 04.01.2021, he is eligible for many posts which also includes Junior Statistical Officer and Tax Assistant in Income Tax (CBDT).

2. The matter was taken up with the Chairman, SSC vide letter dated 26.08.2021.

### **Submissions made by the Respondent:**

The Under Secretary, SSC vide letter dated 22.09.2021 submitted that SSC is a recruiting agency which conducts examinations for recruitment of various Group 'B' and Group 'C' posts for filling up the vacancies reported by the indenting Ministries / Departments / Organisations. The total vacancies arising in an indenting unit and reckoning vacancy for a particular reserved

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5वीं मंजिल, एनआईएसडी भवन, प्लॉट न०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892275  
5<sup>th</sup> Floor, NISD Bhawan, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel. No.011-20892275

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

category, including reservation for PwDs through the system of maintenance of roster, are the exclusive domain of respective indenting Ministries / Departments / Organisations. Thus, they report the vacancies (Horizontal and Vertical) to the Commission to be filled by the direct recruitment. The Commission does not have any role in the recognition of a particular post either suitable or unsuitable for a particular disability. The Commission had uploaded the Notification of Combined Graduate Level Examination (CGLE)-2018 on their website on 05.05.2018. The Commission vide letter dated 25.05.2018 asked all the indenting User Departments vide letter dated 25.05.2018 to identify the suitability of posts for newly identified categories of disabilities as per RPwD Act, 2016 and requested to intimate the Commission in this regard. However, the Commission could collect requisite information from most of the User Departments, in a long span of time. Consequently, on the basis of feedback received from those User Departments, posts identified suitable for the new disabilities have duly been incorporated in the Notice of CGLE-2020 including corrigenda. At the stage of Document Verification (DV) of CGLE-2018, the Commission has decided that as per the provisions of the Notice of the Examination of CGLE-2018, suitability posts under CGLE-2018 for various disabilities and categories under Rights of Persons with Disabilities Act, 2016 would be determined from the information given by the User Departments for CGLE-2020, which are duly incorporated in Notice of Examination of CGLE-2020 and subsequent corrigendum issued of the said examination. Accordingly, SSC-NR acted upon in case of Shri Vikram Singh, a person with 40% Cerebral Palsy and a candidate of Combined Graduate Level Examination, 2018.

**Submission made in the Rejoinder:**

3. The complainant vide his rejoinder dated 07.10.2021 submitted that the new Notification No. 38-16/2020-DD-III was issued on 04.01.2021 and the Document Verification was done on 27.02.2021. Hence, there was ample time for SSC to ask the user departments to revise the suitability of posts advertised. He submitted that the suitability of post was not mentioned against any post in the notification specially for Cerebral Palsy affected candidates.

4. **Hearing:** An hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 21.12.2021.

5. The following persons were present during the hearing:

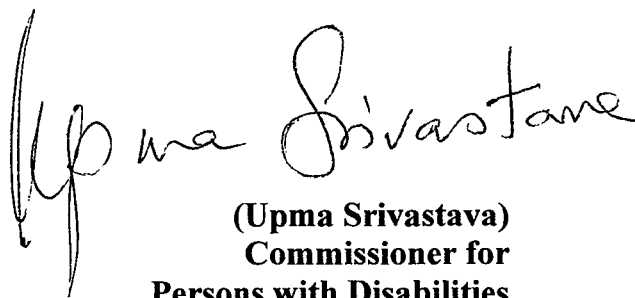
- (1) Complainant: Shri Vikram Singh, in person
- (2) Respondent: Shri Pankaj Kataria, on behalf of Respondent



**Observations & Recommendations:**

6. Examination in question in the present Complaint is SSC CGL Exam 2018. The exam was conducted for various posts. Complainant submits that he qualified the examination. During document verification process, the Respondent asked the Complainant to fill its preference for the posts of CGDA Auditor, Assistant in MEA and Assistant in AFHQ. Complainant was barred from applying for the posts of Junior Statistical Officer, Tax Assistant in Income Tax. Reason given by the Respondent is that these posts are not identified suitable for Divyangjan with Cerebral Palsy.
7. Respondent has submitted that the Notification for SSC CGL 2018 was issued when MoSJE list of identified posts of 2013 was in force. As per that notification posts of Junior Statistical Officer, Tax Assistant in Income Tax were not identified suitable for Cerebral Palsy. When the new list was issued, i.e. on 04.01.2021, the examination was already in its advance stage of document verification. On 31.03.2021 final result was also declared.
8. Respondent committed an error on two points. Firstly, cerebral palsy was included in locomotor disability even before RPwD Act 2016 came into force. Secondly, when the documents verification process was initiated, MOSJE published a list of identified post i.e. 04.01.2021. Therefore, the respondent had the opportunity to implement the latest MOSJE test.
9. It is utmost duty of every establishment to implement law passed by the legislature. In the present complaint respondent, failed to adhere to the statutory mandate and government guidelines issued thereafter. Though, there is clear violation of law, this Court cannot intervene in the present complaint because process by the impugned examination is now complete. The complaint was filed after the examination process reached in advance stage of document verification. Intervention in the present complaint will result in causing damage to the interest of other Divyangjan candidates. However, this Court recommends that the respondent shall take into consideration latest government guidelines and legislative mandate whenever notifications will be issued in future.
10. The case is disposed off.

**Dated: 11.03.2022**



**(Upma Srivastava)  
Commissioner for  
Persons with Disabilities**





सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 12863/1022/2021

Complainant : Shri CT Eswararao Sirla  
91 BN Border Security Force, (BSF)  
Nawgam (Srinagar)  
Jammu & Kashmir  
Email: [eswararaosirla29071985@gmail.com](mailto:eswararaosirla29071985@gmail.com)  
Mobile No: 09462787894

— 1231635

### Versus

Respondent : The Director General,  
Force Headquarter,  
Border Security Force,  
Block No. 10, Lodhi Road, CGO Complex,  
Pragati Vihar, New Delhi-110003  
New Delhi  
Email: [dqbsf@bsf.nic.in](mailto:dqbsf@bsf.nic.in)

— 1231636

### GIST OF COMPLAINT:

The complainant is an employee of Border Security Force as a constable. The complainant is 80% locomotor disability. He given an application for posting and transfer dated 24th November 2015 and another application on dated 17.03.2018. The complainant further submitted that he gave an application on dated 10.01.2021 for requesting transfer to their native place or their nearest home town but his application was rejected. The complainant did not get any information/solution about it. The complainant is requested to CCPD Court to consider his application for transfer him at IG SPL OPS Odisha/Bangalore Frontier Khurda Road Odisha.

2. The matter was taken up with the Respondent vide letter dated 17.09.2021 under Section 75 of the RPwD Act, 2016.

3) In response, DIG (Establishment) vide letter dated 23.11.2021, submitted that the complainant is serving in 91 Bn BSF since 2<sup>nd</sup> December 2014. The complainant appeared before Dy. Inspector General (estt) for interview at Force Headquarter, New Delhi on dated 09.05.2018 regarding posting/transfer to Frontier HQ Bangalore (Odisha) or SHQ BSF Kolkata, which was examined in detail as per service rules but the same could not be acceded to for posting at requested places due to non availability of vacancies of constable (GD).

The respondent further submitted that case of the complainant has been received though Special DG HQ (WC) Chandigarh for posting to Frontier HQ Odisha/Bangalore vide their L/No. 8799-04 dated 14.09.2021 and through this Hon'ble Court CCPD New Delhi for posting of complainant to near his home town.

The respondent was examined the complainant and submitted that presently there is no vacancy of Constable (GD) available at Frontier HQ BSF Bangalore/STC BSF Bangalore and no BSF establishments exists at SHQ BSF Kurda, the complainant was given an opportunity to given four choices of field units for posting from where he can take care of his needs, but instead of giving four choices, the complainant reiterated his choice for Frontier HQ Bhubaneswar (Odisha). On receipt of reply from the complainant, his case was again examined but as there is no vacancy of Constable (GD) available at requested place and the complainant is posted under Kashmir frontier BSF, the complainant was given again an opportunity to provide choices of Field Units under Punjab Frontier, Jalandhar, which being plain area has easy accessibility and resource to medical treatment etc and has also been declared as 'Divyangjan Zone' for treatment of ward of BSF personnel under National Trust. However, the complainant did not submit choices for Field Units and submitted choice for Frontier HQ Odisha/ FHQ BSF CGO, New Delhi/DIG HQ R. K. Puram/Air Wing, New Delhi. As per choice given by the complainant, his case has again been examined, but could not be acceded to for posting at requested places due to non availability of vacancies of Constable (GD).

4) In response, the complainant filed his rejoinder dated 01.12.2021 and submitted that he interviewed for his genuine problem in front of Superior officer of BSF in Delhi but they could not considered his posting and transfer from May 2018 to till date. So much constables are posted in FTR HQ SPL OPS Bangalore (Odisha) as well as other locations of BSF establishments. But his posting could not considered till date even after various letter/applications forwarded to DG BSF through proper channel.

The complainant is not satisfied with the reply submitted by the BSF and stated that he is always mentally harassed by HQ DG BSF for posting and transfer since 2015 to till date. The complainant once again requested to CCPD Court to consider his application and give necessary direction to BSF for transfer him to their native place.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 28.12.2021. The following were present:

- i) Shri CT. Eswararao Sirla – Complainant
- ii) Shri Shailesh Kumar, 2<sup>nd</sup> IC, Shri J.K. Verma, DC (Law) & Shri Munish Kumar, Advocate – Respondent

#### **Observations /Recommendations:**

1) This court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

2) First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfill obligations which arose out of International Instrument. In



1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were to fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,

- a. To create barrier free environment for Persons with Disabilities,
- b. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons

3) Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –

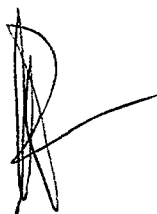
- (a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

4) Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.

5) Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.

6) Issues related to transfer and posting to divyang employees may be divided into three categories –:

- a) Posting of divyang employee at native place,
- b) Exemption from routine transfer of divyang employee,
- c) Posting of employee who serves as care giver of divyang dependant.



## STATUTORY PROVISIONS AND GUIDELINES

7) a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.

b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.

d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.

e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.

f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.

g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.

i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.





## ANALYSIS OF THE PROVISIONS & GUIDELINES

8) It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

9) Even in case of employee who serves as care giver of divyang dependant, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

10) Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependant is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

### OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS

11) **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

12) A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C ) 7927/2020, judgment dated 05.11.2020

13) Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

14) **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

15) This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C ) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

16) **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

17) Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

18) The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

19) In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters court does not sit as court of appeal, but court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfil the international commitments and give equal treatment to Persons with Divyangjan.

20) **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

21) Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court

delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

22) **ISSUE** – In case if employee who is caregiver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

23) O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

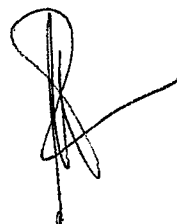
24) It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependant'.

25) Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

**4. Women and children with disabilities.**—(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability."

**16. Duty of educational institutions.**—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities

**24. Social security.**—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of



living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

**27. Rehabilitation.**—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

**38. Special provisions for persons with disabilities with high support.**—(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

**2(d) - “care-giver”** means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability.

26) Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

#### SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

27) Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble court held that the employee must be retained in Jaipur branch even after promotion.

28) Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.



## PRESENT CASE

29) Complainant has filed present Complaint seeking transfer from Srinagar, J&K to either Odisha or Bangalore. Ground for seeking transfer is that the Complainant is divyangjan and hence it is difficult for him to discharge his duty efficiently at present location.

30) Respondent submits that the Complainant submitted his application for transfer to Bangalore, Kolkata or Odisha but because of no vacancies of Constable at these places, he was not transferred. Complainant was also asked to place his choice of preference to post him in Field Units in Punjab but instead he filed his choice to be posted in either Odisha or New Delhi. His case would be considered in 2022 subject to availability of vacancies.

31) During online hearing Complainant also submitted that in Odisha good medical facilities are available as compared to Srinagar, J&K. He further submits that he is assigned standing duty which is not suitable for divyang with locomotor disability.

32) On the issue of transfer this court concludes that this issue squarely falls within the ambit of O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

33) The issue of assigning duties compatible with nature of disability of the Complainant can be resolved by resorting to concept of 'reasonable Accommodation'. 'Reasonable Accommodation' is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016. As per provision, it means necessary and appropriate modification and adjustments, to ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 20(2) makes it a positive obligation of every government establishment to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to divyang employee.

SECTION 2(y) - "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

SECTION 20(2) - Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

34) This principle is incorporated in RPwD Act, 2016 for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable



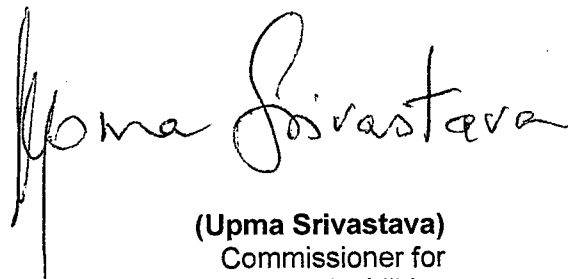
Accommodation' acknowledges that in order to rectify the social problem of *discrimination* with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality, it is a component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC OnLine SC 84.

" 54. The principle of reasonable accommodation has found a more expansive manifestation in the RPwD Act 2016. Section 3 of the RPwD Act 2016 goes beyond a formal guarantee of non-discrimination by casting affirmative duties and obligations on government to protect the rights recognized in Section 3 by taking steps to utilize the capacity of persons with disabilities "by providing appropriate environment". Among the obligations which are cast on the government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation in Section 2(y) incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others." Equality, non-discrimination and dignity are the essence of the protective ambit of the RPwD Act 2016."

35) This concept is connected with the Principle of Equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of divyang employees. This concept is not limited to making modification in physical infrastructure only. Modifications must be made in every aspect of the job which can cause substantial disadvantage to divyang employee in comparison with enabled employee. In addition to modification in physical features of infrastructure, modification can also be made in working hours, assessment of divyang employee, pre-promotion training, providing assistive aids and devices etc.

36) Hence this Court recommends that the Respondent shall transfer the Complainant to station situated in Odisha in accordance with guidelines laid down by Government of India and various case laws of Hon'ble Supreme Court and High Court delineated above. Further this Court recommends that the Respondent shall take resort to the concept of 'Reasonable Accommodation' and shall assign duties which can be efficiently discharged by divyang employee with locomotor disability.

This case is disposed off.



(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 11.03.2022



सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 12997/1022/2021

Complainant : Shri T. Balabrahmam  
APM Accounts, Offg,  
Tadepalligudem Headquarter  
Andhra Pradesh -534101

—R31637

Respondent : The Chief Postmaster General  
Department of Posts  
Office of Supd. of Post Offices,  
Tadepalligudem Division-534101  
Email: [legal.vijayawada@indiapost.gov.in](mailto:legal.vijayawada@indiapost.gov.in)

—R31638

### GIST OF COMPLAINT

The complainant Shri T. Balabrahmam, employee, aged 57 with 90% Locomotor disabilities was recruited against the PH quota during 1987. He has rendered 34 years of service in the department and yet retires within 31 months only. The complainant submitted that Persons with Disabilities are exempted from Rotational transfer policy vide DOPT OM No. dated 31.03.2014. He was posted as single-handed Sub Postmaster of Ch Agraharam delivery Sub Post Office under Tadepalligudem Division of AP Postal circle.

The complainant has requested the Supdt. of Post Offices, Tadepalligudem division to accommodate him in Tadepalligudem head post office, where suitable posts are still available, through his representation dated 21.06.2021. Further is to submit that the Hon'ble Postmaster General, Vijayawada-3 vide letter no. dated 09.04.2019, ordered to accommodate him in Tadepalligudem. All his requests were set aside and posted him as Single handed Sub Postmaster by the Supdt. of Post Offices.

The complainant further submitted that due to his disability and Post covid-19 health Problems he has no other alternative place except to stay in Tadepalligudem Town. Moreover, he has no working knowledge in Finacle and SAP to work elsewhere. The complainant is requested to issue necessary direction for change of suitable place of posting in LSG Cadre in Postal Circle.

2. The matter was taken up with the Respondent vide letter dated 01.12.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Director (Staff), Office of Postmaster General, Vijayawada Region, vide email dated 03.01.2022, submitted that based on the representation dated 18.09.2021 of the complainant, transfers/postings issued vide Superintendent of Post Offices, Tadepalligudem Division were reviewed by the competent authority i.e., Postmaster general, Vijayawada Region and the competent authority issued orders revising the place of posting of the complainant as SPM, Ramnagar SO attached as LSG PA, Tadepalligudem HO and the complainant joined in the revised place of posting on 30.09.2021 itself. Therefore, the grievance has already settled.

4. In response, the complainant did not file any reply against the rejoinder letter issued by the CCPD on 09.01.2022.

**Observations /Recommendations:**

The respondent vide email dated 03.01.2022, informed that based on the representation dated 18.09.2021 of the complainant, transfers/postings issued vide Superintendent of Post offices, Tadepalligudem Division were reviewed by the competent authority i.e., Postmaster General, Vijayawada Region and the competent authority vide Memo No. ST-I/3-1(P) 2019/TPG dated 27.09.2021, issued orders revising the place of posting of the complainant as SPM, Ramnagar SO attached as LSG PA, Tadepalligudem HO and the Complainant joined in the revised place of posting SPM, Ramnagar SO attached as LSG PA, Tadepalligudem HO on 30.09.2021 F/N itself.

This Court's appreciates the sympathetic view taken by the respondent. Since necessary orders have been issued by the respondent, there is no need of further intervention in the matter.

5. This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 15.03.2022





सत्यमेव जयते

## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No: 12939/1022/2021

Complainant : Smt. ILA Guha w/o Shri Suva Guha  
128/14, Hazra Road, Kolkata-700026  
Phone No: 029851676, 09330719930  
Email: [suvaguha38625@gmail.com](mailto:suvaguha38625@gmail.com)  
[llaguha60@gmail.com](mailto:llaguha60@gmail.com)

—P31845

Respondent : The Divisional Railway Manager (P)  
Office of the Divisional Railway Manager  
1<sup>st</sup> Floor, DRM Building, 2<sup>nd</sup> Avenue,  
Kharagpur-721301 West Bengal  
Phone : 03222-255308  
Email: [drmkgp@ser.railnet.gov.in](mailto:drmkgp@ser.railnet.gov.in)  
[gm@ser.railnet.gov.in](mailto:gm@ser.railnet.gov.in) [cste@ser.rail.gov.in](mailto:cste@ser.rail.gov.in)

—P31846

### GIST OF COMPLAINT

The complainant is wife of Shri Suva Guha who is an employee in South Eastern Railway Santragachi office, under Kharagpur division in West Bengal. The complainant submitted that workplace of her husband is situated at far away place from his residence because of which he faces difficulty in commutation to and from his office. The complainant further stated that his hip joints are fully artificial and he is unable to sit straight. He walks with specially designed clutches. Although he has undergone several surgeries on both legs but his condition has shown little improvement.

The complainant further submitted that he joined as a group 'D' staff with the South Eastern Railway in July 2000. Through sincere hard work, has since been promoted in stages to higher ranks and currently working as an office superintendent with the Santragachi office and has been posted there for over 16 years. He is dedicated, sincere and efficient worker; he was awarded the first prize for being the outstanding employee with disability in 2018.

The complainant stated that his residence is at Hazra which is far away from his office at Santragachi. Being a disabled person it is quite painful for him to attend his office at Santragachi. The complainant has requested to CCPD Court to be transferred to the Garden Reach, Kolkata, as it will be more convenient for him to attend office daily.

2. The matter was taken up with the Respondent vide letter dated 20.10.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Dy. Chief Personnel Officer (HQ), vide letter dated 19.01.2022, submitted that the complaint, OS Personnel Deptt. of KGP Divn. (under APO/SRC) was put up to the competent Authority at Divisional level who opined that his transfer case cannot be considered in the light of RBE No. 24/2000, circulated under this Railway Estt. Sr. No. 52/2000.

4. The complainant did not file any rejoinder reply in r/o of rejoinder letter issued by the Office of CCPD on 03.02.2022.

5. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 08.02.2022. The following were present:

- i) Smt. ILA Guha: Complainant
- ii) Shri Raja, Sr. DPO, Khargpur: Respondent

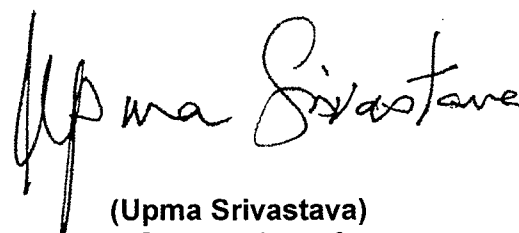
**Observations /Recommendations:**

i) Present Complaint filed by wife of Divyang employee. Complainant submits that her husband (hereinafter referred as 'beneficiary') is presently posted at Santragachi Office, Kharagpur division, West Bengal. She has approached this Court praying for the beneficiary's transfer to Head Quarters of South Eastern Railways. Reason presented by the Complainant for seeking the transfer is that the beneficiary lost his hip joints in an accident and both hip joints are fully artificial and hence he cannot sit straight. In order to reach office he has to climb multiple stairs hence it is difficult for him to reach office.

ii) During online hearing Respondent informed this Court that the Complainant did not apply for transfer through proper channel. Respondent further assured this Court that as soon as the Complainant will apply through proper channel he will be transferred to his desired location, i.e. Head Quarters in Garden Reach, Kolkata.

iii) This Court expresses satisfaction with the positive approach of the Respondent and recommends that the Respondent shall transfer the Complainant to Head Quarters in Garden Reach, Kolkata as soon as the Complainant applies through proper channel. The respondent shall guide the complainant to apply through proper procedure. This Court is inclined to dispose off this Complaint with liberty granted to the Complainant to approach this Court again if the respondent fails to keep its assurance given to this Court.

6. This case is disposed off

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 21.03.2022





सत्यमेव जयते

*extra*

## न्यायालय मुख्य आयुक्त दिव्यांगजन

**COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)**

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

Case No. 12934/1011/2021

### Complainant:

Ms. Rani Srivastav,  
B-Block, 189/190, Azad Nagar,  
Campwell Road, Balaganj, Chowk HO,  
Lucknow-226003  
Email: [sinharani117@gmail.com](mailto:sinharani117@gmail.com)

— 1231838

### Respondent:

Chairman,  
State Bank of India,  
State Bank Bhawan, 16<sup>th</sup> Floor,  
Madam Cama Road, Mumbai-400021  
Email: [cairman@sbi.co.in](mailto:cairman@sbi.co.in)

— 1231839

### Gist of Complaint:

Ms. Rani Srivastava submitted that she has applied for the post of Probationary Officer against SBI advertisement No.CRPD/Probationary Officer/2020-21/12 dated 14.11.2020. 27 posts were reserved for PwDs from categories (d) and (e) of Section 34 of RPwD Act, 2016. She applied as a person with Intellectual Disability / Specific Learning Disability coming under category (d). The post of Probationary Officer is identified suitable for persons with Intellectual Disability / Specific Learning Disability. She is presently employed with Bank of Baroda in Clerical Cadre as Single Window Operator since 15.05.2019 and is posted at Chowk Branch in Lucknow. The complainant succeeded in the preliminary examination and main examination conducted by the Respondent Bank and obtained 111.60 marks in the main examination as against the cut-off marks of 63.25 marks in the (d) and (e) category. She was accordingly called for interview and attended the same on 01.03.2021 after her documents were duly verified and accepted by the Respondent Bank. No specific minimum qualifying marks in the interview were stipulated by the Respondent in their advertisement. The final result was declared on 16.03.2021. To her shock and disappointment, the Respondent declared that the complainant was not qualified in the interview on the basis that the complainant was given 17 marks out of 50 marks in the interview, whereas it was stated in the final result that the minimum qualifying marks in the interview was 17.5 marks for the SC/ST/OBC and persons with disabilities categories. She is aggrieved that the Respondent has treated her at par with persons with physical

*[Signature]*

(Page 1 of 4)

5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892275  
5<sup>th</sup> Floor, NISD Bhawan, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel. No.011-20892275

E-mail: [ccpd@nic.in](mailto:ccpd@nic.in) ; Website: [www.ccd disabilities.nic.in](http://www.ccd disabilities.nic.in)

(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)

disabilities and persons from other reserved categories, i.e. SC/ST/OBC. The complainant has sought the following relief from the Respondent Bank:-

- 1) To declare that the action of the Respondent Bank in specifying minimum qualifying marks in the interview for the post of Probationary Officer for the intellectual disability / specific learning disability category at par with other reserved categories of SC/ST/OBC and physical disabilities is arbitrary, illegal and discriminatory towards the persons with intellectual disability / specific learning disability.
  - 2) Direct the Respondent to provide further relaxation for PwDs with intellectual disabilities/specific learning disabilities in minimum qualifying marks in the interview for post of Probationary Officer and to declare the complainant as having qualified the same.
  - 3) Alternatively, direct the Respondent to add 0.5 marks as grace marks to 17 marks obtained by the complainant in the interview and to declare the complainant as having qualified the same with 17.5 marks.
  - 4) To direct the Respondent to appoint the complainant to the post of Probationary Officer against one of the seven unfilled vacancies in category (d) and (e) pursuant to the Advt. No.CRPD/Probationary Officer/2020-21/12.
  - 5) To direct the Respondent to ensure in future that the interview Panel for interviewing the candidates with Intellectual Disability/Specific Learning Disability include a person with expertise in the field of Intellectual Disabilities to better understand the needs of such candidates and to assess their suitability for the posts advertised.
2. The matter was taken up with the Chairman, State Bank of India vide letter dated 12.10.2021.

**Submissions made by the Respondent**

3. The General Manager, State Bank of India, CR & PD, Mumbai submitted that as per the provisions of the Rights of Persons with Disabilities, Act, 2016, appropriate number of vacancies are kept reserved by the Bank for employees with disabilities. Additionally, Bank extends the following relaxations to persons with disabilities in the PO recruitment:

- i. Relaxation of 10 years in maximum eligible age;
- ii. Relaxation of 5% in minimum qualifying marks in Main Examination & Interview;
- iii. Relaxation in maximum permissible number of attempts;
- iv. Additionally, undernoted facilities may also be availed during exam by Visually Impaired candidates as well as candidates who have limitations in writing, including that of speed:



- a) Extra time of 20 minutes for every 1:00 Hour of Test; and
- b) Facility of Scribe.

The recruitment of Probationary Officers in State Bank of India is done through a three stage selection process. The selection process is detailed in the advertisement for captioned recruitment of Probationary Officers and is as follows:

Phase-I:	Preliminary Examination
Phase-II	: Main Examination
Phase-III	: Interview and Final Selection

Ms. Rani Srivastav (Roll No.3971014116) appeared for interview for the post of Probationary Officer 2021 recruitment at LHO Lucknow. The interview was conducted in a fair manner and Ms. Rani Srivastav was awarded '17.00' marks by the Interview Panel. The interview score (17.00) of Ms. Rani Srivastav was less than the minimum qualifying score for interview viz. 17.50 marks (35%) for SC/ST/OBC/PWD (40% for Gen/EWS). He submitted that since Ms. Rani Srivastav did not secure minimum qualifying score in interview, she did not qualify in interview and as such she did not qualify for final selection. The same was communicated to Ms. Rani Srivastav through the 'Score Sheet' for Main Examination and interview, which was downloaded by her from Bank's' Careers' website and has been attached by her with her complaint. He submitted that in view of the above, the allegation made by Ms. Rani Srivastav in her complaint is not correct and the reliefs prayed by her are unreasonable.

#### **Submissions made in Rejoinder:**

4. The complainant vide her rejoinder dated 01.12.2021 submitted that SBI is non-responsive to several issues she had raised in her complaint inter-alia with regard to discrimination towards persons with Intellectual Disabilities like her, by treating such persons at par with persons with physical disabilities and other non-disabled categories of persons. She submitted that State Bank of India has not addressed the fact that seven vacancies for persons with Intellectual Disabilities/Specific Learning Disabilities in the post of Probationary Officer remain unfilled, despite the fact that DoP&T OM dated 15.01.2018 stipulates that selection standards are to be relaxed to the extent required to fill the vacancies reserved for persons with disabilities, subject only to fitness of the candidates for the post.

#### **Observation/Recommendations:**

5. In the lights of the submissions put up before this Court, the respondent shall opt to apply the concept of Reasonable Accommodation in terms of Section 2(y) and Section 20(2) of the RPwD Act, 2016 and make some changes to accommodate the complainant and any such candidates with benchmark disabilities who is otherwise found eligible for appointment.

6. Reference can be made to DoPT OM No.36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability, if





sufficient number of candidates are not able to qualify, the examination on the basis of general standards, candidates belonging to benchmark disability categories may be selected as per relaxed standards to fill up remaining unfilled reserved vacancies for them.

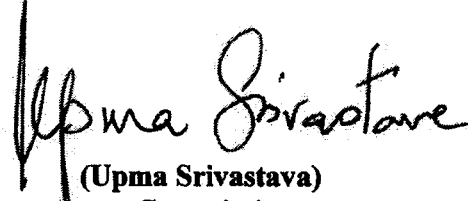
7. The Court recommends that the Respondent shall relax the criterion and shall promote any meritorious divyang employee who might have failed as per the present criterion.

8. Further, in this specific case this Court recommends that keeping in view several vacancies available for persons with disabilities in SBI and the fact that only 05 marks are required to declare the complainant having qualified, reasonable accommodation may be done to give grace mark of 05 to the complainant. This shall enable her to progress in her case at par with other applicants and lead a life of dignity.

9. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order in terms of Section 76 of the RPwD Act, 2016. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of the RPwD Act, 2016.

10. Accordingly the case is disposed off.

**Dated: 22.03.2022**

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities



File No.CC-11011(11)/7/2022-O/o CCPD

extra

## न्यायालय मुख्य आयुक्त दिव्यांगजन

### COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)

सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice and Empowerment

भारत सरकार/Government of India

File No.CC-11011(11)/7/2022-O/o CCPD

Case No. 12658/1011/2021

#### Complainant:

Shri Manmohan Bajpai,  
H. No. 2158, D-Block,  
Indira Nagar, Lucknow – 226 016

— R31832

#### Respondent:

Indira Gandhi National Open University (IGNOU),  
(Through the Registrar)  
Maidan Garhi, New Delhi – 110 068

— R31833

**Disability: 40 visual impairment**

#### Gist of Complaint:

Shri Manmohan Bajpai, the complainant, a person with 40% visual impairment vide his complaint received in this Office on 12.03.2021 submitted that Indira Gandhi National Open University (IGNOU) vide Advertisement No. 57/2020/Admn had invited online applications for filling up Group 'A' Non-Teaching posts on 15.02.2020. The complainant has applied for the post of Deputy Registrar under category (UR, SC & OBC). In the advertisement no reservation was given for candidates with disabilities. He had vide RTI had sought information regarding this violation from IGNOU. The IGNOU in turn vide its reply dated 05.10.2020 has informed the complainant that 'Group 'A' position of non-academic is 177'. IGNOU has also mentioned in its reply that 'vacant position of Group 'A' for non-teaching staff is 107 as on 31.12.2019' and submitted that 'as far as non-academic employee is concerned, there is no visually impaired employee holding the post of Group 'A' post'. The

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complainant has requested to give reservation to PwDs and maintenance of Roster for non-academic Group 'A' Cadre.

2. The matter has been taken up with the Registrar, IGNOU vide letter dated 15.03.2021.

3. The Registrar, IGNOU vide his reply dated June 2021 submitted that the complainant had applied for the post of Dy. Registrar and did not qualify for want of reservation is incorrect. The advertisement for academic and non-academic posts were made strictly in accordance with the Reservation Roster for allocation of vacant posts to persons with Benchmark Disability as per OM No.36035/02/2018-Estt. (Res) dated 15.01.2018 which finalized the reservation rosters for 184 direct vacancies of teaching and academic posts, i.e. Group 'A' posts of the respondent university. He submitted that one more committee was constituted for preparation of the Roster for Dy. Registrar and Asst. Registrar which is Group 'A' non-academic posts of the respondent university. He submitted that it is wrong to say that the respondent University did not provide any reservation for PwDs in Group 'A' Non-teaching posts. He submitted that though there existed 177 posts as claimed by the complainant, the vacancy was only for 107 posts and the advertisement in question was for single vacancy in three posts and 7 vacancies in another post. 107 vacancies contain promotional vacancies and direct vacancies. The complainant is staking his claim against the post of Dy. Registrar wherein only 7 posts were advertised. There exists only 01 backlog vacancy under VH category of Assistant Registrar post which is not filled in. The Respondent submitted that there is no post of Dy. Registrar which is available under PwBD category. The respondent university is in the process of filling up the vacancy in respect of 01 backlog vacancy of PwBD (a) category and 01 vacancy of PwDB (c) category in the post of Asst. Registrar (Group-A, Non-Academic). Hence the averment about the complainant applying for the post of Dy. Registrar holds no substance or merit.

4. The complainant vide his rejoinder dated 05.07.2021 reiterated that IGNOU

has not given any reservation for PwD candidates for the post of Deputy Registrar which is against the Govt. Rules. He also submitted that the post of Deputy Registrar has not been filled so far.

**5. Hearing:** A hearing through video conferencing by the Commissioner for Persons with Disabilities was held on **21.12.2021**. The following persons were present during the hearing:-

- (1) Complainant: Shri Manmohan Bajpai, in person
- (2) Respondent: Ms. Harshita Raghuvanshi, Advocate & Shri Vibhash Tripathi (Legal Cell).

**Observations/Recommendations:**

6. Both the parties were heard.

7. Complainant submitted that the Respondent issued advertisement for Group 'A' non-teaching posts. The total number of posts advertised was 10. Main grievance of the Complainant is that no vacancy was reserved for Persons with Benchmark Disabilities [PwBDs].

8. Respondent submitted that the Complainant applied for the post of Deputy Registrar. Posts of deputy registrar are earmarked from Sr. No. 185 to 191 in Roster. As per DoPT OM Sr. No. 176 and 201 are to be marked for PwD employees. Since the post of Deputy Registrar is neither earmarked at Sr. No. 176 or 201, hence, post of Deputy Registrar is not reserved for PwBD candidates. At Sr. No. 201, post of Assistant Registrar is earmarked, hence it is reserved for PwBD. In the last recruitment cycle post of Assistant Registrar was reserved for PwBD (Visual impairment) candidates. It remained unfilled. It has been carried forward and shall be reserved for PwBD candidates. Apart from backlog vacancy, 1 more post of Assistant Registrar shall be reserved for PwBD candidates, in accordance with Sr. No. 201 of the Roster.

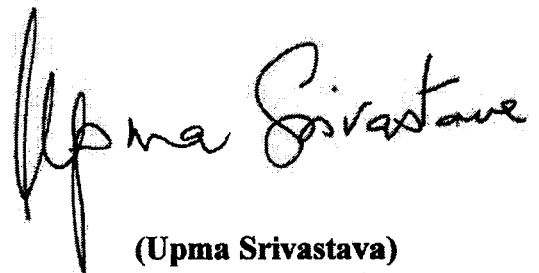


9. During online hearing, the respondent was given another opportunity to appear personally before the Court of CCPD along with officers who are responsible for maintaining the reservation roster. Concerned Officers appeared before the court of CCPD and apprised the Court that the post of Deputy Registrar was not advertised in any previous year because it was created first time in the year 2019. Because of the same reason this post was not earmarked at serial number 176 or 201 or 226.

10. This Court is satisfied with the reply of the respondent <sup>that</sup> ~~since~~ the post was created for the first time. Hence, no question arises to earmark it at serial number 176 or 201 or 226. Further, since it is created for the first time, earmarking it from serial number 175 to 201 is not in contravention of rules relating to reservation for Divyangjan. Intervention of this Court in the present complaint is not warranted at this stage.

11. The case is disposed off.

Dated: 30.03.2022



(Upma Srivastava)  
Commissioner for  
Persons with Disabilities