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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

Case No: 12929/1021/2021

Complainant: Shri Shankar Lal Verma
S/o Shri Jugal Kishore Verma
C-I, BSNL Colony, behind Janana Hospital
Nehru Park, Sikar - 332001, Rajasthan
E-mail: <shankarverma990@gmail.com>

— 1232060

Respondent: The Chairman-cum-Managing Director
Bharat Sanchar Nigam Ltd
Bharat Sanchar Bhawan, Harish Chandra
Mathur Lane, Janpath, New Delhi -110001
E-mail: <ddadmin@bsnl.co.in>
Tel: 011-2373161

— 1232061

Complainant: 45% locomotor disability

GIST of the Complaint:

Complainant Shri Shankar Lal Verma, SDE vide complaint dated 24.09.2021 submitted that BSNL is neither maintaining reservation roster for promotion nor providing reservation in promotion to persons with disabilities.

2. The matter was taken up with the Respondent vide letter dated 12.10.2021 under Section 75 of the RPwD Act, 2016 but despite reminders dated 28.10.2021 & 18.11.2021, no response has been received from the respondent. Therefore, hearing scheduled on 04.01.2022.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 04.01.2022. The following were present:

- Shri Shankar Lal Verma - Complainant
- None appear on behalf of respondent

Observation/Recommendations:

- 3 Complainant submitted that he was recruited on the post of JTO on disability quota in year 2010. As per promotion policy, he was eligible to be promoted to the post of Sub-Divisional Engineer (SDE) after 3 years of service. Hence he was eligible for promotion in year 2013. Due to non maintenance of the Reservation Roster for Divyang employees, benefits of reservation in promotion has not been extended to him. In year 2018 other employees were promoted but he was left out.
4. During online hearing, Complainant informed this court that his colleagues who were appointed along with him and belong to non divyang category have also not been promoted. Hence, it is certain from the facts that the Complainant has not made out the case of discrimination vis a vis non divyang employees. Grievance of Complainant is related to non extension of reservation in promotion to divyang employees.
5. On the issue of reservation in promotion, it is indispensable to note that RPwD Act, 2016 is not the first legislation for rights of Persons with Disabilities. Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995 by virtue of Section 32, provided for 3% reservation of posts. Hon'ble Supreme Court in of RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153 held that ones the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Therefore, Hon'ble Supreme Court extended the benefit of reservation in promotion to persons with disabilities, even though there was no such specific provision.
6. The judgment was delivered in year 2016 and the judgment was related to 1995 Act. New legislation was passed by Hon'ble legislature of the country in year 2016. Title of the legislature is – RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016. It came into effect on 19.04.2017. This act of 2016 has specific provision for reservation in promotion for persons with disabilities (Section 34). It also contains other provisions which grant more rights to Persons with Disabilities. This legislation also contains certain provisions which determine duties of appropriate government establishments towards Persons with



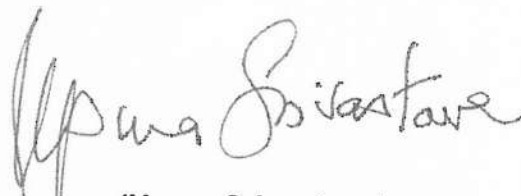
Disabilities. Perusal of both 1995 Act and 2016 Act does not in any way reflects that legislature, by introducing 2016 legislation, intended to diminish or shrink the rights of Persons with Disabilities. Similar view was adopted by Hon'ble High Court of Uttarakhand, whereby court held that judgments rendered in the light of provisions contained in Act no. 1 of 1995 still hold good under the new Act (2016 Act).

7. Hence, not extending reservation in promotion to PwDs because of absence of guidelines from 'appropriate government' is contrary to mandate of 2016 Act and judgments of hon'ble Supreme Court and High Court.

8. This Court has received similar complaints regularly. Order have been passed by this court in the similar complaints titled as B. UMA PRASAD v. CEO Employees Provident Fund Organisation, 11183/1021/2019; C.G. SATHYAN v. DIRECTOR AIIMS, 12376/1021/2020; SRI RAJESH v. DIRECTOR AIIMS, 12592/1021/2020; RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EDUCATION, 12349/1011/2020; MANMOHAN BAJPAI v. KHADI & VILLAGE INDUSTRIES COMMISSION, 12485/1011/2020 in which legal position on the issue was delineated. Copy of the Orders are attached herewith.

9. In view of the clear directions of the Hon'ble Supreme Court and as fully detailed in the enclosed Orders, this Court recommends that the Respondent shall pursue the Orders attached herewith and shall give reservation to PwBD in promotion in all groups of posts including Group A and Group B posts in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016 and judgments of Hon'ble Supreme Court delineated in the Orders attached.

10. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



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: 12949/1023/2021

Complainant: Shri Sushil Kumar
50509-F (HKS)
A 106, Highend Peradise
Raj Nagar Extension, Ghaziabad
E-mail: <ksushil585@gmail.com>

—P32062

Respondent: The Air Officer Commanding
Air Force Station Hindan
Ghaziabad, Uttar Pradesh - 201004
E-mail: <superman.28@gov.in>

—P32063

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated nil submitted that as per the Civil Admin Section of Air Force Station Hindan, there was no relaxation regarding office attendance for House Keeping Staff during Covid -19 period, therefore, respondent had marked absent without leave from 25.03.2020. He alleged that other three staff of the section did not attend the office as per the instruction of Commanders as we are living outside of the Air Force Campus and we were not allowed to enter the Air Force Campus. He further submitted that he had been allotted Government accommodation but he had to vacate in 2018 as there is no accommodation for civilians employees but after vacate, Department allotted accommodation to non disabled civilian employees in the same year.

2. The matter was taken up with the Respondent vide letter dated **25.10.2021** under Section 75 of the RPwD Act, 2016 but despite reminders dated **11.11.2021 & 30.11.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **18.01.2022** but due to administrative exigencies, hearing re-scheduled on **10.03.2022**.

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Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **10.03.2022**. The following were present:

- Shri Sushil Kumar - Complainant
- Group Caption Sandeep Singh on behalf of respondent

Observation/Recommendations:

3. Complainant submits that though attendance of divyang employees was exempted during Covid lockdown period, Complainant was marked 'absent without leave'. His salary was also stopped since July 2020. Accommodation was allotted earlier but in 2018 Complainant was compelled to vacate it.
4. Respondent submits that the Complainant's services were indispensable hence his application for 'work from home' was rejected. He was allowed to bring his own vehicle and his residence is also in close vicinity of the office hence he was not allowed to do 'work from home' Complainant did not even communicate his attendance from home. As far as allotment of accommodation is concerned, married accommodation is not constructed for civilian employees. Initially in 2009 compassionate view was taken and government accommodation was allotted to him and his stay was extended 3 times till 2018. Other officers are also residing outside station because of shortage of government accommodation. Civilian central government employees are provided government accommodation at nearby place in Ghaziabad.
5. Submissions of the Complainant need to be perused vis-a-vis DoPT guidelines. DoPT. O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M. DoPT continued to exempt divyang employees from attending office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by latest O.M. dated 14.06.2021 and is still in force.



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...3....

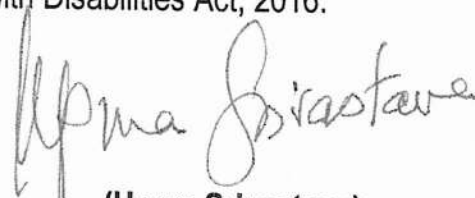
6. In O.M. dated 14.06.2021, it is enunciated that divyang employees will remain exempted from attending office and shall continue to 'work from home' till further Orders. Thereafter on 01.11.2021, DoPT issued another O.m. which did not contain any guideline/instruction w.r.t. attendance of divyang employees. Hence, it is apt to conclude that even after 01.11.2021, exemption for divyang employees continued. Thereafter DoPT issued another O.M. dated 06.02.2022 whereby it was laid down that all employees of all levels, without any exemptions shall attend office on regular basis w.e.f. 07.02.2022.

7. Hence this Court concludes, after perusal of all the guidelines, that divyang employees were exempted from attending office from 27.03.2020 till 13.02.2021 and later from 19.04.2021 till 06.02.2022.

8. This Court recommends that the Respondent shall consider the Complainant as exempted during 27.03.2020 to 06.02.2022 according to DoPT guidelines delineated above and shall issue his salary according to the exemption guidelines.

9. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. 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 Rights of Persons with Disabilities Act, 2016.

10. Case is disposed off.



(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 12.04.2022



सत्यमेव जयते

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

भारत सरकार/Government of India

Case No: 12900/1021/2021

Complainant: Shri Sushil Kanojia

E-mail: <sushilkanojia333@gmail.com>

—R3264

Respondent: The General Manager

The Oriental Insurance Co. Ltd

Head Office, A-25/27, Asaf Ali Road

New Delhi – 110002

E-mail: aartimathur@orientalinsurance.co.in

—R32065

Complainant: 50% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated 22.09.2021 submitted that respondent has neither clear all backlog promotional vacancies from 1995 nor declare separate vacancies for PwD in all Group 'A' identified posts.

2. The matter was taken up with the Respondent vide letter dated **05.10.2021** under Section 75 of the RPwD Act, 2016. But despite reminders dated **21.10.2021** & **08.11.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **31.12.2021** but due to administrative exigencies, hearing re-scheduled on **10.03.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **10.03.2022**. The following were present:

- Shri Sushil Kanojia - Complainant
- Shri B.V.Kant, Chief Manager and Shri Vikas Chadha, Chief Manager (Legal) on behalf of respondent

Observation/Recommendations:

3 Complainant seeks intervention of this court for implementation of reservation in promotion for divyangjan. He submits that since 1995 reservation in promotion is denied hence these backlog vacancies must be cleared.

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4. Respondent refuted the allegations and submits that the Complainant was given promotion whenever the same was due. All these issues were raised before Hon'ble High Court of Madhya Pradesh. Court dismissed the same.
5. It is indispensable to note that RPwD Act, 2016 is not the first legislation for rights of Persons with Disabilities. Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995 by virtue of Section 32, provided for 3% reservation of posts. Hon'ble Supreme Court in RAJEEV KUMAR GUPTA & ORS. v. UNION OF INDIA reported in (2016) 13 SCC 153 held that once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Therefore, hon'ble Supreme Court extended the benefit of reservation in promotion to persons with disabilities, even though there was no such specific provision.
6. The judgment was delivered in year 2016 and the judgment was related to 1995 Act. New legislation was passed by hon'ble legislature of the country in year 2016. Title of the legislature is – RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016. It came into effect on 19.04.2017. This act of 2016 has specific provision for reservation in promotion for persons with disabilities (Section 34). It also contains other provisions which grant more rights to Persons with Disabilities. This legislation also contains certain provisions which determine duties of appropriate government establishments towards Persons with Disabilities. Perusal of both 1995 Act and 2016 Act does not in any way reflect that legislature, by introducing 2016 legislation, intended to diminish or shrink the rights of Persons with Disabilities. Similar view was adopted by Hon'ble High Court of Uttarakhand, whereby court held that judgments rendered in the light of provisions contained in Act no. 1 of 1995 still hold good under the new Act (2016 Act).
7. Hence, not extending reservation in promotion to PwDs because of absence of guidelines from 'appropriate government' is contrary to mandate of 2016 Act and judgments of hon'ble Supreme Court and High Court.
8. This Court has received similar complaints regularly. Order have been passed by this Court in the similar complaints titled as B. UMA PRASAD v. CEO Employees Provident Fund Organisation, 11183/1021/2019; C.G. SATHYAN v. DIRECTOR AIIMS, 12376/1021/2020; SRI RAJESH v. DIRECTOR AIIMS, 12592/1021/2020; RAHUL KUMAR UPADHYAY v. NATIONAL BOARD OF EDUCATION, 12349/1011/2020; MANMOHAN BAJPAI v. KHADI & VILLAGE INDUSTRIES COMMISSION, 12485/1011/2020 in which legal position on the issue was delineated. Copy of the Orders are attached herewith.



....3....

9. In view of the clear directions of the Hon'ble Supreme Court and as fully detailed in the enclosed Orders, this Court recommends that the Respondent shall pursue the Orders attached herewith and shall give reservation to PwBD in promotion in all groups of posts including Group A and Group B posts in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016 and judgments of Hon'ble Supreme Court delineated in the Orders attached.

10. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



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

भारत सरकार/Government of India

Case No: 12951/1023/2021

Complainant: Shri Jagjeetan Pandey
E-mail: <jipandey7@gmail.com>

P32066

Respondent: The Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area, Shaheed Jeet Singh Marg
New Delhi – 110016
E-mail: <kvs.estt.1@gmail.com>
<kvafsgorakhpur@gmail.com>

P32062

Complainant: 50% locomotor disability

GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 20.10.2021 में कहना है कि प्राचार्य द्वारा उनको उत्पीड़ना एवं झूठा आरोप लगाकर उनके विरुद्ध एक पक्षीय आदेश पारित करते हुए एक वेतन वृद्धि रोक दी गई। प्रार्थी का आगे कहना है कि दिव्यांग अभ्यर्थी को आयकर में यात्रा भत्ता की छूट का प्रावधान है परन्तु प्राचार्य द्वारा उक्त छूट का लाभ न देकर आर्थिक उत्पीड़न किया जा रहा है। प्रार्थी ने निवेदन किया है कि उनके ऊपर लगाए गए बिना किसी ठोस आधार के आरोपों को संज्ञान में लेते हुए उनके द्वारा साक्ष्य सहित पक्ष को सुने और प्राचार्य के एक पक्षीय आदेश एक वेतन वृद्धि पर लगी रोक को तत्काल प्रभाव से निरस्त करवाएं।

2. The matter was taken up with the Respondent vide letter dated 26.10.2021 under Section 75 of the RPwD Act, 2016. But despite reminders dated 11.11.2021 & 30.11.2021, no response has been received from the respondent. Therefore, hearing scheduled on 18.01.2022 but due to administrative exigencies, hearing re-scheduled on 10.03.2022.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 10.03.2022 The following were present:

- Shri Jagjeetan Pandey - Complainant
- Shri Anurag Bhatnagar, Assistant Commissioner on behalf of respondent

...2....

Observation/Recommendations:

3. Complainant submits that senior charge was not given despite of the fact that the Complainant is senior. He further submits that more work is assigned to the Complainant. He was compelled to come to school to take classes. He was denied opportunity to participate in 'Pariksha pe Charcha'. He was issued 'Advisory Note' and Charge Sheet was also issued.
4. Respondent submitted that charge of HM was given to some other employee who is senior to the Complainant. On the issue of overburden of work, Complainant submits that time-table is prepared as per availability of teachers. Other teachers are assigned 39 periods per week and the Complainant is assigned 30 periods per week. He was also not issued Orders of Compulsory Attendance. All teachers were issued advisory to take classes from school so that better internet connectivity can be accessed by the teachers but this Order was not 'Compulsory Order'. Advisory Note was issued because he remained absent from his duties without taking prior permission.
5. Apart from the issue of issuance of 'Advisory Note', this court is not inclined to interfere in issues raised in the present Complaint.
6. During online hearing Complainant submitted that the Complainant applied for leave on whatsapp. Other employees also took the same channel and procedure to apply for leaves. However, the Complainant was the only one who was penalised for the same.
7. This Court concludes that the Respondent shall not penalise the Complainant only for doing a job which was done alike by all the employees. This Court recommends that the Respondent shall review its decision to issue 'Advisory Note' to the Complainant.
8. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



न्यायालय मुख्य आयुक्त दिव्यांगजन

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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: 12991/1021/2021

Complainant: Dr. G.D. Mandal
Radhanagar Road, Talpukur East
P.O.: Radhanagar Road, Dist: Paschim Bardhaman
West Bengal – 713325
E-mail: <drgd77dolman@gmail.com>

—132068

Respondent: The General Manager (Personnel)
Coal India Ltd, Coal Bhawan, Premises
No. 04, MAR Plot No. AF-III, Action Area
1-A, New Town Rajarhat, Kolkata – 7000156
E-mail: <gmpers.cil@coalindia.in>

—132069

Complainant: 60% Locomotor disability

GIST of the Complaint:

Complainant Dr. Gautam Deb Mandal, Dy. Chief Medical Officer, E-06 Grade, Eastern Coalfields Ltd vide complaint dated **07.11.2021** inter-alia requested for grant of E-07 Grade with National Seniority under PwDs quota.

2. The matter was taken up with the Respondent vide letter dated **24.11.2021** under Section 75 of the RPwD Act, 2016.

3. Chief Manager (P), Coal India Limited vide letter dated **21.02.2022** inter-alia submitted that the promotion from E6 to E7 grade is based on the principle of merit cum seniority, in which the merit panel is drawn in descending order on the basis of total marks (out of 100) secured by executives in Performance Appraisal/PRIDE, length of service and qualification. The executives securing 75 and above marks are kept in promotable category and rest of the candidates who secure less than 75 marks are kept in non promotable category. Dr. Mandal was considered for promotion to E7 grade in the DPC held on 20.08.2021, however, based on the total marks secured by him, he was under non promotable category as such not promoted to E7 grade.

...2....

4. After considering the respondent's reply dated **21.02.2022** and the complainant's complaint and letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **29.03.2022** but due to administrative exigencies hearing re-scheduled on **30.03.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **30.03.2022**. The following were present:

- Dr. Gautam Deb Mondal – complainant
- Shri S.R. Reddi, HOD (EE)/Chief Manager (Personnel) on behalf of respondent

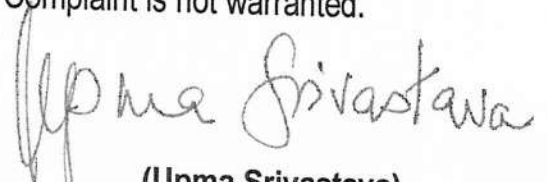
Observation/Recommendations:

5. Complainant submits that he was promoted to E6 grade in 2013. Soon after promotion Orders were stayed by the Respondent because Vigilance enquiry was going on at that point of time. Finally in 2014 enquiry was concluded and 'Strict Warning' was issued to him. In 2016 promotion to E6 grade was restored. Complainant prays that since the enquiry was initiated with malafide intents hence his promotion to E6 grade must be restored w.e.f. 2013.

6. Respondent submits that the Complainant met with an accident in year 2018. He was proclaimed divyang by medical authority w.e.f. 28.09.2019. Complaint which he has filed before this Court pertains to events which happened before 2019 hence his Complaint is not related to disability rights. He was promoted to E6 grade in 2013 but because of vigilance enquiry his promotion was stayed.

7. This Court concludes that the submissions made by the Respondent are correct. Complainant was not even divyangjan before 2019 hence, his allegations which pertain to events which occurred before 2019 can not be held to be connected with discrimination on the basis of disability. Intervention of this Court in the present Complaint is not warranted.

8. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



सत्यमेव जयते

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

भारत सरकार / Government of India

Case No. 12870/1011/2021

Complainant:

Shri Sanjay Khengarbhai Rathod,
Tirupati Society, Alap Park,
Near Ajanta Vidhyalay, Ravapar Road,
Morbi, Gujarat – 363641
Email: ssprajkot@gmail.com

1232109

Respondent:

The Chief Postmaster General, Gujarat,
Makubhai Sheth Marg, Khanpur,
Ahmedabad, Gujarat – 380001
Email: legalrorajkot.gj@indiapost.gov.in

1232110

Disability: 60% visual impairment

Gist of Complaint:

Shri Sanjay Khengarbhai Rathod submitted that he was selected for the post of GDS BPM in Wakaner Khijadiya Gujarat Division under low vision category. The Office of Senior Superintendent of Post Offices, Rajkot Division vide Office of Engagement (Provisional) letter dated 26.04.2021 has stated therein that Shri Sanjay Khengarbhai Rathod's selection for the provisional engagement as GDS BPM, Khijadia B.O. in account with Wankaner S.O./Rajkot H.O. should be in the nature of a contract liable to be terminated by him/her or by the Senior Superintendent of Post Offices, Rajkot Division. He further submitted that it was more than 4 months he had been waiting for his appointment.

2. The matter was taken up with the Chief Postmaster General, Gujarat Circle vide letter dated 13.09.2021.

3. Submission made by the Respondent:

3.1 The Sr. Superintendent of Post Office, Rajkot Division, Gujarat vide letter dated 28.10.2021 submitted that the complainant's as per email dated

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03.09.2021 for denial of appointment to the post of GDS BPM Khijadiya BO is far from truth. Their office never denied for his appointment, but only following the standard prescribed pre-appointment formalities before the recruitment as per rules framed by the Department.

3.2 Vacancy for the post of BPM Khijadiya BO under Wankaner SO was intimated vide their office email dated 10.12.2020. The vacancy was reserved for persons with disabilities (low vision) not for blind. After release of Select list, the name of Shri Sanjay Khengarbhai Rathod was selected against the vacancy of BPM Khijadiya BO reserved for PwD-a category (Low Vision). Accordingly, the candidate was called for examination and verification of documents. On examination of PwD certificate, it was observed that disability certificate dated 30.10.2020 issued by Dr. Pradeep K. Dudhrejiya, Superintendent General Hospital, Morbi, it is clearly mentioned therein that 'He is a case of blindness'. The Civil Surgeon Rajkot was addressed for issue of health certificate after medical examination of the candidate as per due process of recruitment. The R.M.O, Class-I PDU Govt. Hospital Rajkot issued medical certificate No. 918/21 dated 12.07.2021 with note declaring ***"temporary fit as GDS BPM for 01 year, come with job satisfaction certificate on dated 21.06.2022"***. The Civil Surgeon Rajkot vide their office letter No.B2/25/GDSBPM/Khijadiya/2021 dated 28.07.2021 was addressed that there is no provision in recruitment in Government job for conditional health certificate and requested in Government Job for conditional health certificate and requested to re-examine and issue a fresh certificate mentioned 'FIT' or 'UNFIT' as it was mandatory to complete pre-appointment formalities. The Respondent submitted that the vacancy was notified for regular vacancy and as per service condition of the recruitment, (GDS Conduct & Engagement Rules, 2020) it requires Medical Certificate of FITNESS. Even though the applicant had applied for the post of GDS BPM and he had been selected for the post of GDS BPM, now the applicant himself has shown inability of performing duty as GDS BPM vide his application dated 17.07.2021. He has also stated that his life is in danger due to his low vision if he performs the duty as GDS BPM. The rule enclosed and mentioned by him in his application dated 17.07.2021 is for the employees who are already in service, who acquires a disability during his or her service whereas the application is neither an employee nor he has acquired the disability during his service but has been selected on PwD-A (low vision) category and the pre-appointment formalities are under process.



4. Submission made in Rejoinder:

The complainant vide his letter dated 26.10.2021 and 10.11.2021 submitted that he had not received the joining letter for the post of GDS BPM from the Department of Post.

5. **Hearing:** A hearing through video conferencing by the Commissioner for Persons with Disabilities was heard on **23.12.2021**. The following persons were present during the hearing:

- (1) Shri Sanjay Khengarbhai Rathod, the complainant in person.
- (2) Shri S.K. Singhal, Deputy Superintendent, Rajkot for the Respondent.

6. Observations & Recommendations:

6.1 Complainant submits that the posts of Branch Postmaster, Assistant Branch Postmaster and Dak Sevak were advertised. Complainant got selected but has not been given appointment letter.

6.2 Respondent in its written reply submits that the post of 'Branch Postmaster and Assistant Branch Postmaster were not advertised for category of 'Blind' divyangjan.

6.3 During online hearing, Respondent submitted that the Complainant has not been given appointment letter yet because pre-appointment formality is yet to be completed. The pre-appointment formality is submission of fitness certificate / health certificate. Respondent further submitted that the fitness which the Complainant has submitted declares him as 'temporary fit'. Respondent assured that if the Complainant will submit renewed health certificate, appointment letter will be issued to him. During online hearing, the Complainant submitted that the medical board has declined to issue renewed fitness certificate because of his disability.

6.4 There are two issues which warrant adjudication of this court. First one is related to identification of post and the second one relates to issuance of fitness certificate.

1. Identification of Post

1.1 Respondent's submission relating to identification of posts 'Branch Postmaster' and 'Assistant Branch Postmaster' for 'Lower Vision' category or 'Blind' category is devoid of merits. MoSJE issued list of identified posts. This court pursued the list. On Sr. No. 1264 of Group C posts, 'Postmaster is identified suitable for both 'Blind' as well



as 'Low Vision' category. Similarly on Sr. No. 1265, post of 'Sub-Postmaster' is also identified as suitable for the two categories.

1.2 Respondent failed to prove that there is any difference between 'Branch Postmaster' and 'Postmaster'. Similarly, Respondent could not distinguish between 'Assistant Branch Postmaster' and 'Sub-Postmaster'. This court concludes that post of 'Branch Postmaster' and 'Assistant Branch Postmaster' are identified as suitable for 'Blind' and 'Low Vision' categories of divyangjan, in accordance with MoSJE list of identified posts.

2. Issuance of 'Fitness Certificate'

Complainant submits that the Medical Board has denied 'fitness certificate' because of disability. It is unjust on the part of the 'Medical Board' to treat the case of 'divyangjan' at par with enabled employees. When a divyang candidate is appointed on the post which is suitable for disability category of such divyang candidate, his fitness can only be ascertained by keeping into consideration status of his disability.


6.5 In the present Complaint, posts which are in question are suitable for 'Blind' and 'Low Vision' category. Therefore, the Complainant who is 60% Blind divyangjan is eligible to be appointed on the post. This Court concludes that the Medical Board shall examine the fitness of the Complainant after taking into consideration the status of his disability and also after taking into consideration the fact that the posts are identified suitable for divyangjan with 'Blind' and 'Low Vision' categories. Further, this Court recommends that the Respondent shall inform the Chief Medical Officer, who is certifying authority to issue 'medical fitness certificate', about details relating to identification of post.

6.6 The appointment orders may be issued thereafter.

6.7 The respondent is advised to submit their action taken report within three months in compliance with the recommendations made in this Order in terms of Section 76 of the RPwD Act, 2016.

6.8 The case is disposed off.

Dated: 12.04.2022


(Upma Srivastava)
Commissioner for
Persons with Disabilities



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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

Case No. 12838/1012/2021

Complainant:

Shri Abhay Kumar,
A-101, Prateek Fedora,
Plot E-11, Block-D, Sector – 61,
Noida – 201 301

R32111

Respondent:

All India Institute of Medical Sciences,
(Through the Director)
Sri Aurobindo Marg, Ansari Road,
New Delhi – 110 029

R32112

Disability: 86% Multiple Disability (OH+Speech & Language Disability+Mental Illness)

Gist of Complaint:

Shri Abhay Kumar submitted that his elder sister, Ms. Archana, aged 35 years has been suffering from Multiple Disabilities since birth. The nature of her disabilities are such that it affects her speech, muscle strength, rapid muscle movements and coordination. Her writing and typing abilities are severally affected due to her disability. This condition has subsequently led to developmental disorders and slightly impaired intellect. Despite the difficulties, she is an extremely sincere, hardworking, disciplined and mature person. Ms. Archana applied for the post of Stenographer advertised by AIIMS, Delhi via Advertisement No. 7-1/2019-Estt.(RCT) in March 2020 against 02 vacancies reserved for persons with disabilities in 4th category (MD, ASD, MI etc). The Respondent vide notice 114/2020 dated 13.08.2020 notified the scheme of examination for the post of Stenographer which included a written examination (Stage-I) and Skill Test (Stage-II). As per the scheme, Final merit list was to be based only upon marks obtained in Stage-1 Examination, provided the candidate qualifies in Stage-II, i.e. Skill Test (Stenographic Test). He submitted that

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usually for the recruitments conducted by RRB, SSC etc, candidates with disabilities whose writing/typing speed is affected due to disability are exempted from such qualifying skill test. The Complainant's sister immediately wrote an email to the Respondent seeking exemption from Skill Test, but did not receive any response. Complainant's sister qualified the Stage-I examination and was called for Stage-II Skill Test. None of the candidates belonging to 4th category (MD, ASD, MI etc) could qualify the Skill Test. Subsequently this matter came up for consideration of this Court in Case No. 12413/1014/2020 dated 02.03.2021 and this Court directed Respondents to reconsider the case of candidates with disabilities with reasonable relaxation and fill up the vacancy. A re-examination has now been notified for candidates with disabilities on 08.08.2021 vide Notice No. 104/2021 dated 14.07.2021. Despite clear directions from this Court to conduct examination with relaxed standards, no such relaxation has been prescribed in the notice. Complainant's sister objected to this notice by writing an email to the respondent seeking exemption from Skill Test. She further requested that if the Skill Test is not exempted, then she should be allowed to appear in the Skill Test with assistive devices like personal laptop, digital voice recorder and speech to text software, but she has not received any response to her letter till date. He submitted that it is physically impossible for the Complainant's sister and similarly placed candidates to meet such stringent skill requirements of Shorthand Typing @ 80 wpm and transcription within 50 minutes that too with not more than 5% mistakes. By way of prescribing mandatory skill test, respondent (AIIMS) has actually created a barrier that candidates with disabilities like complainant's sister cannot cross it leading to a situation of posts under 4th category (MD, ASD, MI etc) remaining unfilled which leads to discrimination with such students. The complainant has prayed for the following relief.

- a) Suitable direction to the respondent to keep the Stage-II re-examination for PwD candidates on hold until this case is decided.
- b) Suitable directions to the respondent to exempt complainant's sister and similarly placed candidates from appearing in Stenography Skill Test that is being pressed upon by the Respondent as a qualifying criterion despite obtaining good marks in written examination.
- c) Suitable directions should be given to the Respondent to allow Complainant to appear in the Skill Test with assistive devices like personal laptop, digital voice recorder and speed to text software.



2. The matter was taken up with the Director, AIIMS, New Delhi vide letter dated 24.08.2021.

Submissions made by the Respondent:

3. The Administrative Officer, AIIMS, New Delhi vide letter No. 1-25/2018-Estt.(RCT)/P/F dated 03.12.2021 submitted that in compliance of instruction/guidelines 34-16/2-2-18 DD.III dated 12.12.2018, the AIIMS, New Delhi has constituted an Expert Committee for the purpose of identification of posts suitable for all categories of disabilities identified under Section 349(1) of the RPwD Act, 2016. The Committee examined the provisions of RPwD Act, 2016 jobs/duties expected to be performed by the incumbents in various posts (s), physical/functional requirement to carry out the jobs assigned to these posts, identify various posts which can be reserved for persons with various kind of disabilities through direct recruitment/promotions. After taking all relevant factor committee identified various posts to be reserved for persons with specific type of disabilities for direct recruitment and Group 'C' promotional posts to be reserved for PwD candidates. He submitted that AIIMS, New Delhi has been giving four percent reservation/one percent for persons with benchmark disabilities as specified in four groups under Rights of Persons with Disabilities Act, 2016 in direct recruitment and three percent in Group C promotional posts. AIIMS, New Delhi has appointed one Grievance Redressal Officer for PwD candidates vide Notification No. 1-25/2018-Estt.(RCT) (PF) dated 12.02.2021. He submitted that as regards representation of Shri Abhay Kumar, AIIM, New Delhi has started the process to fill up the posts of Stenographer under direct recruitment. There were 03 posts earmarked for PwD candidates, 02- for ASD, MI, MD and 01 for LV. The Computer Based Test (Stage-I) was conducted on 21.08.2020 and 14 candidates under PwD category had qualified the CBT examination. He submitted that all the candidates qualified in the online CBT examination for the post of Stenographer were called for appearing in Skill Test (Stage-II) on 01.02.2021 to 06.02.2021. Total 08 candidates appeared in Skill Test (Stage-II) examination in PwD category. Out of which only 01 candidate had qualified as per scheme of examination in PwD-LV category. Ms. Archana has not appeared in this Skill Test Examination (Stage-II) and was absent. Those PwD candidates who could not qualify or did not appear in the Skill Test (Stage-II) held on 01.02.2021 to 06.02.2021, AIIMS gave them another chance to appear in Skill Test examination held on 08.08.2021 with relaxed standard. Ms. Archana was also called for appearing in the Skill Test with relaxed standard. She was informed about this vide email dated 20.07.2021. In response Ms. Archana vide her email dated 25.07.2021 requested for exemption



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from the skill test and in case exemption was not given to her from the skill test, she requested for permission to use assistive devices like her personal laptop, digital voice record and speed to text software. AIIMS advised her for using Braille / Braille keyboard. Ms. Archana appeared in the re-examination skill test (stage III) for PwD candidates with relaxed standards held on 08.08.2021 but could not qualify the same. The Respondent submitted that the Skill Test (Stenography / Typing Test) is the base requirement for performing the job of a Stenographer. It is further submitted that the Staff Selection Commission has also been conducting the required skill/stenography for PwD candidate by giving compensatory time for transcription to the PwD candidates. The same procedure / relaxed standard was adopted by the AIIMS for skill test to fill up the post of Stenographer in respect of posts earmarked for PwD category. The Respondent submitted that from the above submission, it is evident that the appeal made by the petitioner has already been considered. As Ms. Archana could not pass the skill test, she could not be considered for appointment against the post of Stenographer.

Submission made in Rejoinder:

4. The complainant submitted that during the pendency of this complaint before this Court, respondent conducted the Stage-II Skill Test (re-examination for PwDs) in which out of the 08 candidates who have appeared no additional candidates qualified the test. As a result, 02 vacancies reserved for 4th category (MD, ASD, MI etc) remained unfilled despite these candidates qualified the Stage-I written exam. He submitted that this is blatant violation of this Court's directions given in Case No. 12413/1014/2020 dated 02.03.2021 wherein this Court has given the following direction:

“(iv) Even if one candidate is available who can be appointed with relaxed standard, the same shall be done. Later on gradually with handholding training and support the candidate will fulfil the criteria also”.

The complainant submitted that his sister along with other PwD candidates were called for re-examination of Stage-II Skill Test on 08.08.2021 vide Notice No. 104/2021 dated 14.07.2021. Despite clear directions from this Court to conduct examination with relaxed standards, no such relaxation was prescribed in the notice. Complainant's sister objected to this notice by writing an email to the respondent seeking exemption from Skill Test. She further requested that if the Skill Test is not exempted, she should be allowed to appear in the Skill Test with assistive devices like personal laptop, digital voice recorder and speech to text

software. The use of assistive devices is already permitted vide letter F.No.16-110/2003-DD.III dated 26.02.2013 issued by the Department of Disability Affairs. He submitted that Braille keyboard is a requirement for visually disabled person and serves no use for 4th category (MD, ASD, MI etc) PwD candidate. The post of Stenographer has been identified suitable for candidates suffering from disabilities like Cerebral Palsy, Muscular Dystrophy etc. The complainant referred to the Gazette Notification No. 38-16/2020-DD-III dated 04.01.2021 and submitted that the candidates with disabilities are allowed usage of modern day technologies to compensate for the skill deficiency (Shorthand writing and typing) and therefore, there is no need to keep stenography skills test as a qualifying criterion for otherwise eligible and qualified candidates. A person with disability can easily meet the functional requirements for the post of stenographer with the use of assistive devices like digital voice recorder and speed to text the software. Therefore, reasonable relaxation in appointment for such candidates as provided in Rights of Persons with Disabilities Act, 2016 should mean exemption from stenography skill test.

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

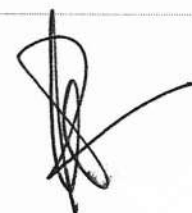
- 1) Complainant: Shri Abhay Kumar in person.
- 2) No representative present from the Respondent side.

6. Observation/Recommendations:

6.1 Complainant alleged that since 2008 Respondent had issued Group A teaching posts vacancies multiple times, however, divyang candidate had never been appointed against these vacancies. Complainant claimed that he has been 'visiting-faculty' in the Respondent establishment since year 2005 and he has also been a member of the Jury. Therefore, he is eligible for the teaching post. On number of occasions, he applied for the advertised posts of Professor under PwD category, however he was never appointed.

6.2 Respondent submitted that there are different parameters to judge the competency of Professor and 'Visiting-faculty'. Candidate was declared not successful in the past because his performance in the selection process was not meritorious. Merely because the Complainant is 'visiting-faculty' and is a member of the Jury does not ipso-facto make him eligible for being a professor.

6.3 Online hearing was conducted on 18.11.2021. Thereafter, the Respondent was asked to submit details of vacancies which arose in the establishment since 2008. Respondent submitted that recruitment process was conducted in 2008-



09, in which 43 group 'A' teaching posts were advertised, out of which 31 remained vacant. After 2008-09, 54 vacancies were again notified in 2012-13, out of which 33 remained vacant. Later, in 2014-15, 42 vacancies were advertised, out of which 39 remained unfilled. Finally in 2019-20, 45 vacancies were notified, out of which 13 remained vacant. Further, Respondent informed that in 2019-20, 2 vacancies were reserved for divyangjan, out of which 01 remained vacant.

6.4 There are two issues which emerge from the present Complaint. One is related to representation of divyangjan in Group 'A' teaching posts in Respondent establishment. Another is related to appointment of the Complainant.


6.5 Complainant claimed that he is visiting faculty and is eligible to be appointed against the teaching post. This Court does not have mandate to examine the eligibility of any person for appointment to the post. Hence, this Court is not inclined to interfere in the issue of appointment of the Complainant.

6.6 As far as vacant posts are concerned, it is evident from the submissions made by the Respondent that since 2008, each time the Respondent carried out recruitment process, vacancies remained unfilled including those posts which were reserved for divyangjan. To keep posts vacant is a retrograde step. Respondent must make all efforts to fill the advertised vacancies. To keep posts vacant in each recruitment cycle does not yield any positive outcomes.

6.7 This Court recommends that the Respondent shall calculate total number of vacancies in Group 'A' teaching posts and shall reserve 4% of such vacancies for Divyangjan.

6.8 The case is disposed off.

Dated: 12.04.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



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

Case No: 13099/1022/2022

Complainant: Shri Raman Kumar Tiwari
Awasth No. 49, Old Type-3
Kendrachal Colony Gujaini
Dabauli, Kanpur, Uttar Pradesh
E-mail: <ramantiwari40269@gmail.com>

132147

Respondent: The Director/Medical
Directorate Genl., I.T.B. Police
West Block, Wing – 02, Ground Floor
R.K. Puram, New Delhi – 110066
E-mail: <dirmed@itbp.gov.in>

132148

Complainants: 93% Multiple Disability

GIST of the Complaint:

शिकायतकर्ता का अपनी शिकायत दिनांक 02.02.2022 में कहना है उनकी दोनों आँखों में Eye OL Implant हुआ है तथा एक कान में Cochlear Implant है तथा वर्तमान में AFO के सहारे दोनों पैरों से खड़ा होता है तथा वर्तमान में प्रार्थी मेदान्ता मेडिसिटी, गुड़गाँव, जी.एस. वी.एम. मेडिकल कॉलेज, कानपुर तथा रीजेन्सी हास्पिटल, कानपुर के किडनी विंग से उपचाराधीन है तथा पूर्णतः अपने पिता पर आश्रित है। प्रार्थी का आगे कहना है कि उनके पिता श्री राम निवास तिवारी, 32 वीं वाहिनी, भा.ति.सी. पुलिस बल, कानपुर में सहायक उप निरीक्षक के पद पर सेवारत है तथा उनका स्थानान्तरण दिनांक 17.06.2021 को 46वीं वाहिनी, राय बरेली में हुआ परन्तु प्रार्थी के निवेदन पर, निदेशक (चिकित्सा) महानिदेशालय ने अपने पत्र दिनांक 09.08.2021 के तहत स्थानान्तरण को यथावत रखते हुए दिनांक 31.03.2022 तक 32वी. वाहिनी कानपुर में स्थगित कर दिया तथा दिनांक 31.03.2022 के पश्चात् राय बरेली प्रस्थान के लिए आदेश कर दिये गये। प्रार्थी ने निवेदन किया है कि उनके पिता का स्थानान्तरण 32वीं वाहिनी अथवा ई.एफटीआर, लखनऊ में करवाया जाए।

2. The matter was taken up with the Respondent vide letter dated 09.02.2022 under Section 75 of the RPwD Act, 2016.

3. महानिदेशालय, भा.ति.सी.पु.बल, नई दिल्ली का अपने पत्र दिनांक **17.02.2022** में कहना है कि श्री राम निवास तिवारी के बेटे की दिव्यांगता को ध्यान में रखते हुए जे.ई.बी.-21 में उनका स्थानान्तरण लेह एवं पूर्वोत्तर जैसी अति कठिन वाहिनी/फॉर्मेशन की अपेक्षा 46वीं वाहिनी रायबरेली में किया गया जो कि वर्तमान में सरल क्षेत्र में आता है एवं इसके नजदीक समस्त चिकित्सा सुविधा उपलब्ध है जहाँ कर्मी अपने बेटे के ईलाज के साथ-साथ बल द्वारा सौंपी गई जिम्मेवारियों का भी निर्वहन कर सकता है।

4. प्रार्थी का अपने प्रति उत्तर दिनांक **23.02.2022** में कहना है कि वह प्रतिवादी द्वारा दिये गये जवाब से संतुष्ट नहीं है।

5. After considering the respondent's reply dated **17.02.2022** & complainant's letter dated **23.02.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **15.03.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **15.03.2022**. The following were present:

- Shri Raman Kumar Tiwari – complainant
- Dr. Chandan Dewan, Dy. Director on behalf of respondent

Observation/Recommendations:

6. 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.

7. 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 fulfil 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

8. 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.

9. 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.



10. 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.

11. 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

13. 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

14. 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



.....6.....

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.

15. 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.

16. 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

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

18. 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



19. 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.

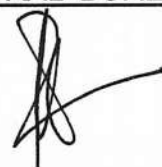
20 **ISSUE** – Since transfer is an incidence of service should employee follow transfer Orders without exception?

21. 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.

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

23. 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.

24. 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.

25. 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.

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

27. 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.

28. **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?



29. 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.

30. 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'.

31. 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.

32. 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

33. 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.

34. 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

35. Complaint is filed by divyang dependant of government employee. Earlier the Complainant was posted at Kanpur. By transfer order dated 17.06.2021 he was transferred to Rai Bareilly. Complainant seeks transfer of the employee to Kanpur. Transfer orders were suspended till 31.03.2022.



36. Respondent refuted the allegations and submitted that as per establishment transfer policy, no employee can be posted at 'light area' for more than 3 years. Disability of employee's son was taken into consideration and hence he was not posted in 'difficult area', instead he was posted in 'light area', i.e. Rai Bareilly, near to his hometown Kanpur.

37. During online hearing, the Complainant submitted that he has no problem in being transferred to any place where NAPRO hospital is situated. Further, he submitted that he wants to stay at such place for next 3-4 years so that his dependant son can get better treatment.

38. This Court accepts the arguments forwarded by the Complainant. As delineated above, O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T lays down that government employee who serves as care giver of divyang dependant child may be exempted from routine/rotational transfer. Objective of this O.M. is to enable such employee in providing suitable environment to such employee where he can perform his duties and at the same time cater to the medical needs of divyang dependant.

39. This Court recommends that the Complainant shall be retained at Kanpur for at least next 3 years so that he can take care of medical needs of dependant divyang child.

40. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. 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 Rights of Persons with Disabilities Act, 2016.

41. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



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

Case No: 13010/1022/2021

Complainant : Smt. Indrani Mukherjee
W/o Shri Sanjeev Kumar
Flat No. 508, Tower 5
Adore Happy Homes Grand,
Sector 85, Near PuriPranayam
Faridabad-121002
Email: sanjeevrli@rediffmail.com
sanindrani@gmail.com

132149

Versus

Respondent : The Directorate General of
Factory Service and Labour Institutes (DGFASLI)
N.S. Mankiker Marg, CLI Building, Sion,
Mumbai-400022
Email: dg-dgfasli@dgfasli.nic.in
sanjay.prabhu@dgfasli.nic.in
tp.preetha@dgfasli.nic.in

132150

GIST OF COMPLAINT

The complainant is wife of Shri Sanjeev Kumar who is working in the capacity of Additional Assistant Director (safety) [AAD(S)] at Regional Labour Institute (RLI) Faridabad under Director General Factory Advice Service & Labour Institute (DGFASLI). He is physically challenged with 50% locomotor disability. His post was earmarked for PH candidates exclusively. The complainant further submitted that in his 17 years of services, he has been transferred thrice. Due to his frequent transfers, they have to face lot of problems as he cannot do his daily chores without anyone's help. The complainant further submitted that her daughter is in Class-X and relocating at this crucial point would create a lot of problem for her academically as well as emotionally.

The complainant further submitted that at the time of his last transfer from RLI, Kolkata to RLI, Faridabad, he has made a representation to the CCPD office acting on which case no. 6398/1022/2016. The respondent DGFASLI vide its OM No. 15/13/2013, dated 14.03.2018 has agreed to transfer him back to Kolkata as per policy of DoPT OM. No. 36035/3/2013-Estt. (Res) dated 31.03.2014. As he had had been already transferred and they had come along with him and got our children admitted to schools in Faridabad, her husband reiterated that he has already faced the initial hardship and transferring him back to Kolkata will give physical, mental and financial losses again including loss of ex-chequer's money. So, vide his application dated 05.04.2017 he requested to drop the case and subsequently, vide Hon'ble Court's order dated 20.04.2018, the Court dropped the case. It would be pertinent to mention that his husband vide his application dated 03.03.2021 has requested to change his hometown, which can be done once in entire service period, has not been intentionally done by DGFASLI authorities so that he can't get the benefit as per clause of DoPT OM. No. dated 13.03.2002.

The complainant further stated that he has been again transferred to RLI, Chennai which will again bring a lot of problems and troubles for her, his husband and children. Her daughter is in class-X and at this juncture they can't accompany his husband to Chennai. Further, his husband is suffering from Dilated Cardio Myopathy (DCM) along with hypertension and diabetes for which he is undergoing treatment at QRG Healthcare Hospital, Faridabad. Also Head of office, RLI Faridabad vide his note no. RLIF/Admin/Per(22) dated 26.10.2021 had also requested the Head Quarter to retain his husband at RLI Faridabad which has been denied by the competent authority and he has directed to relieve his husband from RLI, Faridabad.

The complainant further stated that the AAD(S) from RLI, Chennai is being brought to RLI, Faridabad and his husband is being transferred to RLI, Chennai, that too in public interest involving ex-chequer's money at the time of pandemic. The complainant is requested to CCPD Court to direct the competent authorities of DGFASLI to stop her husband rotational transfer as this posting is not a sensitive one.

2. The matter was taken up with the Respondent vide letter dated 22.12.2021 under Section 75 of the RPwD Act, 2016. Also as asked by the respondent a copy of complaint was again forwarded on 20.01.2022. But despite reminder letter dated 09.01.2022 & 03.03.2022, the respondent did not filed the comments within time frame and sought time again and again on one pretext or another. The Complainant vide email dated 23.02.2022, has requested for early disposed of his case.

3. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 30.03.2022. The following were present:

- i) Smt. Indrani Mukherjee-Sanjeev Kumar, Husband: **Complainant**
- ii) Shri R.S. Vaidya, deputy Secretary, Factory Service & Labour Institute:
Respondent

Observations /Recommendations:

1. Complaint is filed on behalf of the employee of Respondent establishment. Complainant submits that the employee has been transferred thrice in last 17 years. Post held by the employee is Additional Assistant Director (Safety). Previously he was posted at Regional Labour Institute, Faridabad. Recently he was transferred to Chennai office. Complainant joined Chennai office on 30.11.2021. Complainant further submits that the employee is living alone in Chennai and family of the employee cannot join him in Chennai because daughter of the employee is studying in 10th standard and cannot leave her school.

2. Respondent has refuted the claim and has submitted that the employee was posted at Kolkata office from 2009 to 2016. Even though he was promoted in 2013, his location was not changed. In 2016 he was transferred to Faridabad. He has been transferred to Chennai as per Transfer Policy of the establishment.

3. During online hearing, Respondent submitted that the Complainant holds 'sensitive' posts. As per Respondent's transfer policy, employees who hold 'sensitive' posts are transferred every 3 years. Further Respondent submitted that the transfer policy has recently been amended keeping into consideration the rights of divyangjan. The amended policy has also been sent to concerned ministry for necessary approval.



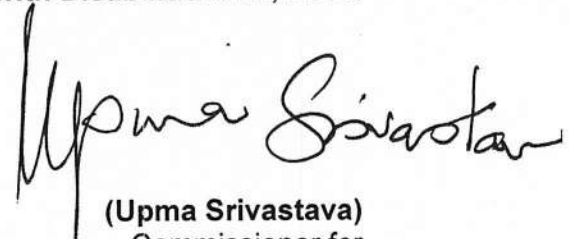
4. During online hearing, Complainant further submitted that employee's child is studying in 10th standard. If the family of the employee will shift to Chennai along with the employee, child's study will be adversely affected.

5. Article 21 of Indian Constitution as well as Section 3 of Rights of Persons with Disabilities Act, 2016 envisages that Divyang persons can enjoy right to life with dignity. Right to life with dignity includes right to take care of one's children. If the employee will be kept in Chennai, it will force his child and family to join him in Chennai, hampering the education rights of the child.

6. Hence, this Court recommends that the Complainant shall be transferred back to Faridabad, where he can take care of his child's education rights.

7. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. 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 Rights of Persons with Disabilities Act, 2016.

This case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



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

Case No: 13037/1022/2021

Complainant : Shri Subhash Chander Gupta
1-A, Sanjay Colony,
Near Aggrassin Chowk Gurudwara,
Sri Ganganagar Rajasthan Pin-335001
Email: subhash.sgnr@gmail.com
Mobile No: 09413932474

132151

Respondent : The Manager
Punjab National Bank
Head Office, Plot No. 4
Dwarka Sector-10
New Delhi-110075
Email: md@pnb.co.in, mdps@pnb.co.in
rakeshgandhi@pnb.co.in

132152

GIST OF COMPLAINT

The complainant filed his complaint dated 22.12.2021, submitting that his son 70% locomotor disability is suffering from progressive neuropathy due to which sensation in his body is affected. He can't walk properly and faces tremors in legs. The complainant further submitted that from 01.04.2021, his son has been posted to LDM office at Shriganganagar and Location and infrastructure of which can't be deemed to be a suitable environment for discharge of duties efficiently by any means for a handicapped person. The complainant further stated that his son has been made second man of the branch and Has been given all duties from day begin of the branch to day end and having all work load of the branch which make him totally unenergetic and exhausted by evening and his body particularly legs and hands start trembling. Bank manager being lead district manager is mostly on tour and there is no other officer posted in the branch and all pressure has been on his son.

The complainant further submitted that branch is type of small congested room situated in a highly crowded another public dealing branch without any ventilation/ no window with congested sitting arrangement of 7 people which is creating health problem to his son due to poor ventilation and congestion, his son who is suffering from progressive neuropathy is being affected negatively and working in a high risk environment of Covid infection as even basis social Covid norms can't be followed.

The complainant further submitted that branch where his son is posted is basically inside a most crowded branch of the bank. There is a common small gate for entry in the office. This branch is one of the most crowded bank of the city. There is no washroom of the bank. There is a small common washroom that is handicapped unfriendly, shared by 2-3 branch offices and public. For a handicap person and particularly in this time of Covid 19 this is very risky for health. The Complainant is requested to CCPD Court to intervene in the matter and immediate transfer of his son Shri Pushkal Gupta to an office in Sri Ganganagar (viz. any of the 4 offices

[Signature]

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

namely (i) Circle Office, or (2) PLP or (3) MCC or (4) Recovery division having suitable environment and no public dealings.

2. The matter was taken up with the Respondent vide letter dated 03.01.2022 under Section 75 of the RPwD Act, 2016.

3. In response, Dy. General Manager, Punjab National Bank, Dwarka, New Delhi, dated 07.02.2022, submitted that his son has 70% locomotor disability. In his representation filed by the complainant has requested to transfer his son to any of the four offices in Shriganganagar, i.e. Circle Office, PLP, MCC or Recovery Office. The respondent further submitted that Shri Pushkal Gupta is presently posted at LDM office, Shriganganagar. The infrastructure and environment of the LDM office is completely friendly for PwD. Also, the office is centrally located, wherein Shri Pushkal Gupta can easily commute to and fro from his residence. Therefore, the allegations with regard to the safety and security of Shri Pushkal Gupta in the branch do not hold any merit. The respondent further submitted that Circle Office, Shriganganagar had also requested district medical officer to constitute a medical board to examine the disability of Shri Pushkal Gupta. Upon the acceptance of the same, medical board was constituted and accordingly, Shri Gupta was advised to be present before the board on 27.12.2021; however he did not appear for the same.

4. The Complainant did not file reply against the rejoinder letter issued by the Office of CCPD dated 18.02.2022.

5. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 30.03.2022. The following were present:

- i) Shri Subhash Chander Gupta – Represented by the father of the Complainant
- ii) Shri Mukesh Kumar Sinha, DGM (HR), Head Office- Respondent

Observations /Recommendations:

1. Complaint is filed on behalf of the divyang employee, hereinafter referred to as 'beneficiary'. Presently posted in Sri Ganganagar circle of the Respondent establishment. Branch where the Complainant is posted has following problems:

- a) Office is not ventilated.
- b) Employee is over burdened with work. He is second in charge of the office where he is posted.
- c) Branch is located in an extremely accident prone area. Hence, the employee's life is in danger.
- d) Washroom of the office is not handicapped friendly.

Complainant prays before this Court for employee's transfer to another branch.

2. Respondent submits that the Office where the Complainant is posted is located at central location. It is very well connected by public transport and hence accessible for the Complainant.

3. During online hearing, Complainant submitted that because of his disability, the beneficiary has to crawl in order to reach his office. He faces problems because the office is located at a distance of 4-5 K.Ms. away from his residence.



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4. Respondent also submitted during online hearing that the Complainant was always exempted from rotational transfer. Earlier he was posted at a location for 6 continuous years on 3rd and 4th floors and he never Complained regarding the same. He was transferred to the present office on his own request. Complainant requested the Respondent to post him at a location where he need not to deal with the customers of the bank. At the present location/office, there is no dealing with the customers of the bank. Some other staff members also filed Complaint against him at his previous location. Considering all these points, he was transferred to the present office.

5. On the issue of work load this Court concludes that present posting of the Complainant is suitable according to the needs and wish of the Complainant. Since he himself expressed his desire to be posted at such an office where he can be assigned light duties hence present place of posting cannot be termed as discrimination with the Complainant. Therefore, on this issue this Court shall refrain from intervention.


6. Accessibility is the most fundamental and indispensable element of equality. Every Government establishment is duty bound to make necessary modifications in its infrastructure in order to accommodate divyang employees. Rule 15 of Rights of Persons with Disabilities Rules, 2017 read with Section 40 of Rights of Persons with Disabilities Act, 2016 enunciate the same.

7. This Court recommends that the Respondent shall form a team which will visit the office and inspect the ventilation conditions and washroom of the office where the Complainant is presently posted. This team shall also inspect the ease of accessibility of the washroom vis-a-vis the Complainant and other divyang employees. Report with necessary evidence shall also be submitted with this Court.

8. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. 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 Rights of Persons with Disabilities Act, 2016.

This case is disposed off.

Dated: 12.04.2022


(Upma Srivastava)
Commissioner for
Persons with Disabilities



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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

Case No: 12954/1022/2021

Complainant : Shri Pramod Kumar
Village Habaspur, PO Dhamni
Thana Haspura, District Aurangabad
Bihar-824115
Email: pramodbaby12@gmail.com
Mobile No: 06200023129/07870357779

Versus

Respondent : The Divisional Railway Manager
East Central Railway
Sonpur, District Saran
Bihar-841101
Email: drmpersonnel2015@gmail.com
drm@see.railnet.gov.in
Contact No: 06158-221638
Fax No: 06158-221667

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 20.10.2021, में कहना है वह 75 प्रतिशत दृष्टिबाधित रेल कर्मचारी वरिये प्रशखा अभियंता (कार्य लाईल) बरौनी के कार्यालय में खलासी हैलपर के पद पर कार्यरत है। शिकायतकर्ता ने आगे कहा है कि उन्होंने दिनांक 06/02/2017 को स्वयं के अनुरोध पर सोनपुर मंडल से मुगलसराय मंडल के गृह जिला औरंगाबाद के गया स्टेशन पर जाने हेतु सोनपुर मंडल के इंजीनियरिंग विभाग में आवेदन प्रस्तुत किया। शिकायतकर्ता का आगे कहना है कि लगभग 4 वर्ष बीत जाने के बाद भी उनके आवेदन पर कोई कार्यावाही नहीं की गई और उनके अस्थांतरण नहीं हो सका।

शिकायतकर्ता का आगे कहना है कि उनके पिता काफी बुर्जग होने के कारण अक्सर बिमार रहते हैं कार्य स्थल से घर की दूरी काफी ज्यादा होने के कारण स्वयं पत्नी एवं पिता जी की देख भाल करना 75 प्रतिशत दृष्टिबाधित दिव्यांगजन के लिए असम्भव है। अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उनका स्थानांतरण सोनपुर मंडल से मुगलसराय मंडल के गृह जिला औरंगाबाद के गया स्टेशन पर कर दिया जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 08.11.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. कार्यालय भरेप्र (कार्मिक)/सोनपुर का अपने पत्र नं. दिनांक 24.12.2021 में कहना है कि शिकायतकर्ता श्री प्रमोद कुमार, खलासी/हेल्पर अधीन वसेई/कार्य/लाईन/बरौनी के डीडीयू मंडल के गया स्टेशन पर निजी अनुरोध स्थानांतरण के मामले को इस कार्यालय के संदर्भित पत्र 02 दिनांक 10.08. 2020 के द्वारा डीडीयू मंडल को स्वीकार्य किये जाने हेतु पत्र जारी किया गया, परन्तु डीडीयू मंडल के संदर्भित पत्र 03 के द्वारा इस कार्यालय को सूचित किया गया है कि रिक्ति के अभाव में सक्षम अधिकारी द्वारा शिकायतकर्ता के डीडीयू मंडल में स्थानांतरण पर अस्वीकृति प्रदान की गई है।

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

4. The Complainant filed his rejoinder dated 23.02.2022, submitted that he is dissatisfied with the reply given by the Railway department because according to DOPT person with disability employee group (C&D) should be posted at their native place at least native district. Railway board also issue the instruction as same as mentioned above under RBE 23/1992. Hence this is totally irresponsible reply. The complainant once again requested to CCPD Court to consider his case for transfer.

5. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 30.03.2022. The following were present:

- i) Shri Pramod Kumar: Complainant
- ii) Shri Atul Kumar, Assistant Personnel Officer: 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 fulfil 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 make 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 holds the post of Helper/Khalasi. Earlier he was posted at Barauni which comes under Sonpur division. On 06.02.2017 Complainant filed an application for transfer to Gaya station of Mughalsarai division.

30. Respondent submits that letter was sent to Mughalsarai division for grant NOC on 10.08.2020. Mughalsarai division by letter dated 17.12.2021 refused to grant NOC because no vacancy was available in that division.

31. Taking into consideration nature and percentage of the Complainant's disability this court concludes that the case of the Complainant squarely falls in the ambit of government guidelines ^{vide} 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.

32. Objective of this O.M. is to provide an environment to divyang employee where he can adjust comfortably according to his special needs and perform his duties efficiently.

33. Hence, this Court recommends that the Respondent shall post the employee to such station in Mughalsarai division, which is nearest to home of the Complainant and which is accessible for divyangjan with same disability as that of the Complainant. Even if the vacancies are not available in Mughalsarai division, the Respondent shall adjust the Complainant against some other employee or may also search for avenues of mutual transfer..

34) **Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. 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 Rights of Persons with Disabilities Act, 2016.**

This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



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

Case No: 12905/1022/2021

Complainant : Smt. Rashmi
W/o Shri Navneet Kumar
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—R32155

Respondent : The General Manager (HRD)
Central Bank of India
Zonal Office Lucknow-226001
Mobile No: 09920990818
Email: zmluckzo@centralbank.co.in

—R32158

GIST OF COMPLAINT:

शिकायतकर्ता ने अपनी शिकायत में कहना है कि उनके पति श्री नवनीत कुमार कर्मचारी संख्या 111504 सेंट्रल बैंक ऑफ इंडिया में सीनियर मैनेजर के पद पर कार्यरत हैं। शिकायतकर्ता का आगे कहना है कि वे बंगलोर से लखनऊ रीजन रिक्वेस्ट ट्रांसफर पर दिनांक 27.10.2020 को खुद के खर्चे पे आए थे और उनकी पोस्टिंग रीजनल ऑफिस लखनऊ में थी। शिकायतकर्ता की 3 साल की जुड़वा बेटियाँ हैं जिसमें से एक बेटी को जिसका नाम आदिति राज है को आटिज्म नाम की बीमारी है और उसका इलाज लखनऊ से चल रहा है। आटिज्म का इलाज बिना किसी देरी के, नियमित एवं सुचारु रूप से हो तो बच्चा काफी हद तक सामान्य हो सकता है। शिकायतकर्ता का आगे कहना है कि फील्ड महाप्रबंधक, लखनऊ ने दिनांक 12.07.2021 को उनके पति का ट्रांसफर अयोध्या रीजन में कर दिया है जिसके अंतर्गत वे नंदनगर, जिला-बस्ती में पोस्टेड हुए हैं।

शिकायतकर्ता का आगे कहना है कि इस बीमारी का इलाज लखनऊ जैसे बड़े शहर में ही उपलब्ध है तथा अयोध्या रीजन में इस बीमारी का इलाज उपलब्ध नहीं है। शिकायतकर्ता का आगे कहना है कि उनके पति ने सभी स्तर पर लिखित एवं मौखिक रूप से यह अनुरोध किया है की उनकी बेटी के जारी इलाज को देखते हुए फिलहाल उनका तबादला लखनऊ से दूर न किया जाए। शिकायतकर्ता स्वयं दोनों बेटियों के साथ फील्ड महाप्रबंधक से मिलने गयी परन्तु उन्होंने मिलना भी जरूरी नहीं समझा। शिकायतकर्ता का आगे कहना है कि फील्ड महाप्रबंधक ने उनकी बेटी के इलाज की तनिक भी चिन्ता किये बगैर उनके पति का ट्रांसफर अयोध्या रीजन में कर दिया।

अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उनकी बेटी के आटिज्म के इलाज को देखते हुए अविलम्ब इस मामले में हस्तक्षेप करे तथा उनके पति श्री नवनीत कुमार, वरिष्ठ प्रबंधक का ट्रांसफर वापस अयोध्या रीजन से लखनऊ करवाने की कृपा की जाए।

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. Zonal Manager, Central Bank of India, vide email dated 12.11.2021 submitted that Shri Navnit Kumar joined the services of the bank on 29.01.2011 as Assistant Manager in Scale 1 and took promotion in Scale II as Manager on 1.4.2016 and in Scale III as Senior Manager on 10.07.2019.

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The respondent further submitted that after his joining he was placed at various centres under regional offices, Durgapur, Bangalore, Lucknow and presently under Ayodhya region. Further, the respondent submitted that the bank officer for promotion in scale 3 should have completed mandatory 2 years service in rural centre. In the event the officer has not completed the said required stint in Rural & Semi Urban centre then he has to complete the same upon accepting promotion in scale 3. Thus, Shri Navneet was transferred to Regional office, Ayodhya vide Transfer order bearing no. ZO/HRD/2021-22/220 dated 12.07.2021 for his further posting in Ayodhya region for completion of Mandatory Rural/Semi Urban stint. The respondent further submitted that after completion of mandatory Rural/semi-Urban Stint, he will be transferred back to Lucknow region in subsequent rotational transfers.

The management of the bank is sensitive to the position of Navneet Kumar that one of his daughters is having Autism Spectrum Disorder and for that reason his transfer order clearly stipulates that he will be transferred back to Lucknow after he completes mandatory Rural /Semi Urban Stint. Further, the respondent submitted that since Navneet Kumar is a careerist and has opted for his promotions to scale 3 he is required to complete the mandatory Rural/Semi Urban Stint.

4. The complainant has filed rejoinder dated 15.11.2021 and submitted that her husband has joined Central Bank of India on 29.01.2011 in officer cadre. In his career of more than 10 years and even after his promotion as scale 3 on 10.07.2019, he never refused to undergo rural/semi urban stint. Rather her husband vide his representation dated 13.07.2021, requested bank management that he is willing to undergo rural/semi urban stint nearby Lucknow centre but due to undergoing therapy for Autism of her daughter, it is extreme difficult for her family to shift from Lucknow. The complainant further submitted that in transfer policy for main-stream officer also, there are exemptions to the caregiver of dependent daughter who is having intellectual disability including Autism spectrum disorder. Her husband has already completed 2 years of rural and semi urban service was short of only 1 year of rural/semi urban service.

The complainant further submitted that her family has suffered a lot since transfer of her husband. The complainant and her daughters are left alone at Lucknow due to transfer to her husband and if needful are not done soon, her daughters treatment will come to an end. Therefore, I most humbly request you to take necessary action in the matter and impart justice to her and her daughter and transfer back her husband Navneet Kumar, senior manager, from Ayodhya region to Lucknow center on urgent basis.

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 fulfil 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 Respodnent 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. In the present case, the Complaint is filed on behalf of the employee of the Respondent establishment. One of the daughter of the employee is divyang with Autism disorder. Complainant was posted at Lucknow where treatment of her Divyang daughter was going on. He was transferred to Ayodhya region.

30. Respondent submitted in its Reply that the Complainant was transferred because as per the transfer policy of the Respondent establishment every officer has to complete 2 years of mandatory posting at rural location.

31. Two aspects need to be addressed, firstly whether any exemption from compulsory rural posting may be given to employees with divyang dependants; secondly, even if no such exemption can be given then how such employees can be accommodated.

32. As mentioned above, O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T clearly enunciates that employees with divyang dependant must be exempted from transfer. The same was reiterated by Hon'ble Court in case of PRADEEP KUMAR SRIVASTAVA v. CENTRAL BEURAU OF INVESTIGATION. 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.

33. RPwD Act, 2016 in Section 20(5) also enunciates that the government establishment may frame policies for posting and transfer of divyang employees. Respondent must take an empathetic view and frame such guidelines, in order to accommodate such employees and provide them an atmosphere where they can perform up to optimum levels.

34. Second aspect which needs consideration is what is the alternate remedy if exemption from rural posting is not possible. During online hearing this Court asked the Respondent as to why the Complainant was posted at such rural location which is situated far away from her native place in another state. Undoubtedly, in India it is not difficult to find rural locations. However, Respondent could found a location only at far away distance from Complainant's place of posting.

35. Fact that the Respondent establishment failed to frame separate transfer and posting policy for such employees reflect unsympathetic attitude of the Respondent establishment towards divyang employees and also reflect the failure of the Respondent establishment in effective implementation of RPwD Act, 2016 in letter and spirit.

36. Hence, this Court concludes that the present case is covered by the guidelines laid down in the following provisions and O.Ms. –



- a. SECTION 20 (2) OF RPWD ACT, 2016
- b. SECTION 20 (5) OF RPWD ACT, 2016
- c. O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T

All these provisions have been explained in the preceding paragraphs.

37. This Court recommends that the Complainant shall be transferred back to Lucknow region where he can concentrate on the treatment of her divyang daughter and at the same time discharge his duties efficiently. This Court further recommends that the Respondent shall frame separate transfer and posting policies for employees who have divyang dependants.

38. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. 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 Rights of Persons with Disabilities Act, 2016.

This case is disposed off.



(Upma Srivastava)
Commissioner for Persons
with Disabilities

Dated: 12.04.2022



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

Case No: 12999/1022/2021

Complainant : Shri Umakant
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 Ahmedabad Mandal
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1232157

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1232158

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 18.11.2021, में कहना है वह टी.ई.लेवल 3, अहमदाबाद मंडल, पश्चिम रेलवे में कार्यरत है। शिकायतकर्ता ने झांसी मंडल उत्तर रेलवे में स्वयं के निवेदन पर स्थानांतरण कर समाहित किये जाने के संबंध में आवेदन दिया था जिसे अहमदाबाद मंडल ने पत्रांक दिनांक 25.07.2018 के माध्यम से उचित मंजूरी के लिए झांसी मंडल भेज दिया गया था।

शिकायतकर्ता का आगे कहना है कि उन्होंने अहमदाबाद मंडल रेल प्रशासन से अनेक बार निवेदन किया था कि उन्हें अहमदाबाद मंडल से कार्यमुक्त कर झांसी मंडल स्थानांतरित कर दिया जाए परन्तु पर्याप्त समय गुजर जाने के बाद भी उन्हें स्थानांतरित नहीं किया गया। अतः शिकायतकर्ता ने सीसीपीडी कोर्ट से विनम्र निवेदन किया है कि उन्हें झांसी मंडल स्थानांतरित करवाने की कृपा की जाए।

2. The matter was taken up with the Respondent vide letter dated 02.12.2021 under Section 75 of the RPwD Act, 2016.

3. The respondent DRM, Western Railway filed the comments dated 25.01.2022, submitted that the complainant was appointed against handicap quota though Railway recruitment board as Ticket Examiner level 3 and allotted Ahmadabad Division. Presently he is working as Sr. TE level 5. The respondent further submitted that after joining the services employee has requested for Inter Railway transfer to Jhansi Division of North Central Railway. As per extent instructions of Railway board under letter no. dated 06.12.1996, the application of the employee was registered in the name noting priority register for inter railway transfer maintained by this division and his application was forwarded to Jhansi division of NCR for accepting.

The respondent further submitted that acceptance to accommodate above employee in Jhansi Division was received by this office vide DRM (P)-Jhansi letter dated 27.08.2018, but due to large number of vacancies in the cadre of Ticket checking category the complainant along with other employees who were senior to the complainant in the name noting priority register for Inter Railway transfer could not be relieved in the interest of safe operation of trains.

The respondent further submitted that Railway board recently vide letter no. dated 01.10.2020 has decided that NOC issued by the receiving railway should be valid for a period of six months and if transfer of the employee concerned are not effected within this period, the NOC in such cases should mandatorily be revalidated. The employee should be relieved on transfer only after re-confirming the validity of the NOC. In the case of employee, the NOC from Jhansi Division is received in the year 2018- and 6 months validity period is already expired and therefore as per instructions of railway board NOC is required to be revalidated.

The respondent further submitted that Railway board policy vide letter no. dated 11.02.1992, it is stated that employee Shri Umakant Upadhyay has applied for the post of TC against the vacancies of cadre of Western Railway and since appointment of the complainant was not on regional basis, therefore he could not be posted near his native as his native comes under the jurisdiction of North Central Railway.

4. The complainant did not file his reply in r/o of rejoinder letter issued by the O/o CCPD dated 03.02.2022.

5. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 22.03.2022. The following were present:

- i) Shri Umakant - **Complainant**
- ii) Shri Y. Radheshyam, Assistant Personnel Officer, Western Railway - **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 fulfil 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."

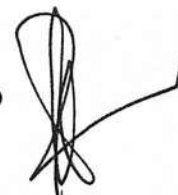
16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities

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 submits that he applied for transfer to Jhansi division. Application was forwarded to Jhansi division for receiving NOC. The same was also received, however, he was never relieved from his services. Currently he is posted in Ahmedabad division of Western Railways.

30. Respondent submits that in Respondent establishment, an employee may not be relieved even if NOC is received if there are certain reasons like paucity of staff etc. Complainant was not relieved because there was shortage of staff. As per latest circular, NOC remains valid for 6 months. In case of the Complainant, his NOC was received in 2018. Now it has expired hence he cannot be transferred. Complainant's name is on Serial No. 15. Therefore, even if he would be transferred, 14 other employees will be transferred before him.

31. This Court concludes that transfer policy of the Respondent establishment violates disability rights. In case of divyang employees, there are clear guidelines of the Government,

delineated above, to give preference to divyang employees in cases of transfer and posting. On the other hand, Respondent establishment does not even transfer the divyang employee when NOC is received.

32. This Court recommends that the Respondent shall transfer the Complainant to Jhansi division. In case the NOC received earlier has expired then the onus lies on the Respondent to obtain renewed NOC from the concerned office/department/division.

33) Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. 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 Rights of Persons with Disabilities Act, 2016.

This case is disposed off


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



सत्यमेव जयते

248

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: 12995/1022/2021

Complainant : Shri Dinesh Kumar
Stenographer Grade-II
Office of Principle Commissioner
of GST & Central Excise
6/7 A.T.D Street, Race Course Road
Coimbatore-641018
Email: dineshk.15031986@gmail.com
Mobile No: 09889847575

1232159

Respondent : The Principle Chief Commissioner of
GST & Central Excise,
7-A, Ashok Marg Lucknow, Uttar Pradesh-226001
Phone No: 0522-2233063
Email: lkocadrecontrol@gmail.com

123268

GIST OF COMPLAINT

The complainant filed his complaint dated 17.11.2021, submitting that he had joined as stenographer grade II of Central Excise & Customs, Coimbatore zone, in the Central Excise & Customs department as a direct recruit in CCA Chennai zone under CBEC (Now CBIC) on 07.01.2014, after qualifying Staff Selection Commission Steno Grade D Exam, 2012. Presently, he is working as a Stenographer grade II of GST & Central Excise, Coimbatore (Executive), Commissionerate under the Cadre Controlling Authority (CCA), Chennai Zone. The complainant's native place is Nagpur district, village & post Harbaspur, Tahsil Ghatampur, Kanpur, Uttar Pradesh. It lies under the jurisdiction of GST & Central Excise Commissionerate, Kanpur which falls under the jurisdiction of Chief Commissioner of GST & Central Excise, Lucknow. He is 50% Locomotor Disability and suffering a lot of difficulties in day to day life.

The complainant further submitted that competent authority, Cadre Control Authority, GST & Central Excise, Tamil Nadu & Pondicherry Zone has already granted "No Objection Certificate (NOC) for Inter Commissionerate Transfer dated 10.06.2016. As per the DoPT letter dated 13.03.2002, stated that physically handicapped employees for transfer to near their native place should be considered favourably. The complainant further stated that letter dated 19.08.2016 was sent to the Coimbatore Commissionerate by the Additional Commissioner, Cadre Control Cell, O/o Chief Commissioner, Central Excise & Customs, Lucknow, regarding called for the vigilance clearance & proforma for request transfer. The requisite information was forwarded to Chief Commissioner (CCA) central Excise, Lucknow, by the Commissioner, Central Excise & Customs, Coimbatore dated 20.09.2016, but nothing has come up till now. The complainant is waiting for his transfer order since last 5 years & transfer order is yet to be issued by the Office of CCA, GST & Central Excise, Lucknow Zone. The Complainant is requested to CCPD Court to take necessary action against the respondent and give direction for Inter Commissionerate Transfer him to Kanpur Commissionerate which is near to his native place.

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

2. The matter was taken up with the Respondent vide letter dated 02.12.2021 under Section 75 of the RPwD Act, 2016.

3. In response, CCSC, Cadre Control Zone, Lucknow, vide email dated 24.12.2021, submitted that the NOC from CCA, Chennai Zone was received in CCA Lucknow on 21.06.2016. However, due to non-availability of special provision for absorption in recruitment Rules 2011 for Steno grade II, ICT in the grade is not permissible. Further, the provisions for ICT in DoPT circular dated 27.10.2011 are not applicable in Stenographer Grade II when the absorption clause is not present in the recruitment rules for the grade.

The respondent further submitted that the Vigilance clearance and proforma of the complainant was received in CCA Lucknow dated 20.9.2016. However, as there was no vacancy available during the period August 2016 to September 2018 in any category in Stenographer Grade II, decision on the all 18 ICT representations of officers, in the grade, including that of Shri Dinesh Kumar, could not be considered. In the meanwhile, CBIC vide circular dated 20.09.2018 clarified that the ICT is non-permissible in absence of special provision in Recruitment Rules which permits 'absorption of persons holding the same or comparable posts by belonging to the cadre of another Commissionerate or Directorate or any other office under Central Board of Excise and Customs. The respondent further stated that ICT in the grade of Tax Assistant is permissible due to the availability of special provision of absorption in recruitment Rules for Tax Assistant (Group C).

The respondent further submitted that Stenographer Cadre recruitment is done by staff Selection Commission and selection is done on all India bases in open competition. Selected candidates are allocated to different zones on their merit by Merit Cum Preference criteria i.e. candidate who have scored relatively more marks get zone of their preference against available vacancies.

4. In response, the complainant filed his rejoinder by e-mail dated 03.01.2022, submitted and accepted that there is no absorption clause in the recruitment rules of Steno Grade II. However, If this is the only reason for not granting ICT in terms of the provisions of CBEC (Now CBIC), circular, dated 27.10.2011 that what is the purpose of issuing such a circular. If granting of ICT depends solely on the provision of absorption clause in the particular recruitment rules, then there is no need to issue the above mentioned DOPT circular.

The complainant further submitted that Lucknow zone has already admitted that ICT in the grade of TA was given based on the circular dated 27.10.2011 subject to availability of vacancy and special provision, which calls for separate cadre in each Commissionerate. The complainant stated that system set in place vis-à-vis separate cadre for TA in a zone is the same as that for Steno Grade II, both being Group C posts.

The complainant once again requested to CCPD Court to please look into his case and give direction to the respondent for transfer him to Kanpur Commissionerate which would be of great help to him.

5. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 24.02.2022. The following were present:

- i) Shri Dinesh Kumar: **Complainant**
- ii) Shri Priya Ranjan Srivastava, Joint Commissioner, CCO. Lucknow : **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 fulfil 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.



(a) 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.

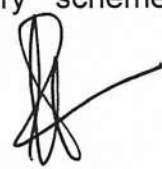
24. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. 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 submits that he joined as Stenographer Grade - II on 07.01.2014 in Chennai Zone. Presently he is posted in Coimbatore Commissionerate under Cadre Controlling Authority, Chennai Zone. His native place is Kanpur, Uttar Pradesh. Kanpur lies under Kanpur Commissionerate. He applied for Inter Commissionerate Transfer in year 2016. Received NOC from Cadre Controlling, Chennai Zone on 10.06.2016 but Lucknow Zone never issued transfer orders despite of receiving NOC from Chennai zone.

30. Respondent replied that Inter Commissionerate Transfer of Stenographer Grade - II is governed by Recruitment Rules 2011. These rules do not permit for absorption hence transfer order was not issued. In year 2018 CBIC issued circular whereby it clarified that ICT in case of Stenographer Grade - II is not allowed by virtue of Recruitment Rules, 2011. ICT in case of Group C is allowed because of special provision present in Recruitment Rules of this cadre.

31. During online hearing Complainant further informed this Court that he applied for transfer on loan basis but the same was not acceded to. Respondent assured this Court that if the Complainant will apply again for transfer on loan basis, the same will be considered positively.

32. Taking into consideration the assurance forwarded by the Respondent and willingness of the Complainant to be posted on loan basis, this Court recommends that the Respondent shall transfer the Complainant on loan basis to Kanpur Commissionerate immediately.

33. Further this Court is inclined to attract the kind attention of the Respondent to Section 20(5) of Rights of Persons with Disabilities Act, 2016. The provision casts duty on the Respondent to frame separate transfer and posting policy for divyang employees and therefore this Court recommends further that the Respondent shall frame separate transfer and posting policy for divyangjan in accordance with the statutory provision, judgments of hon'ble Supreme Court and High Courts and government guidelines delineated above.

34. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. 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 Rights of Persons with Disabilities Act, 2016.

This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022