



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: 13066/1021/2022

Complainant: Shri Indresh Kumar
South East Central Railway Divyang Employees
Welfare Association, Bilaspur, Chhatisgarh - 495004
E-mail: <secdewa2016@gmail.com>

1232509

Respondent: The Chairman
Railway Board, Rail Bhawan
Raisina Road, New Delhi
E-mail: <crb@rb.railnet.gov.in>

1232510

The General Manager
South East Central Railway
Fifth Floor, New GM Building, Bilaspur
Chhatisgarh - 495004
E-mail: <gm@secd.railnet.gov.in>

1232511

Complainant: 55% Locomotor disability

GIST of the Complaint:

Complainant Shri Indresh Kumar, Office Superintendent in Department of Stores, General Stores Depot, SEC Railway, Raipur vide complaint dated 24.12.2021 submitted that 3% reservation in promotion for PwDs in Departmental promotion is being provided in Northern Railway, Department of Promotion of Industries and Internal Trades and other departments, therefore, he has requested to direct the respondent to maintain separate roster for reservation in promotion for PwDs since 1996 and provide reservation in Departmental Promotion with any discrimination.

2. The matter was taken up with the Respondent vide letter dated 04.02.2022 under Section 75 of the RPwD Act, 2016.

3. Sr. Personnel Officer (RP), South East Central Railway vide letter dated 10.03.2022 inter-alia submitted that formal instructions on 4% reservation in promotion have not yet been issued and are likely to be issued by the DoP&T shortly. As and when the same is received, it will be considered for adoption in the Railways.

....2....

4. Complainant vide rejoinder dated **05.04.2022** reiterated his grievance.

Observation/Recommendations:

5. On the issue of reservation in promotions, 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 PwDs 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 Courts.




...3....

.....3.....

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: 06.05.2022



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: 13030/1023/2021

Complainant: Ms. Reena B Rasaniya
NA 202, Nilachakra Apartment
LBS Colony, Old Station Bazar
Bhubaneswar – 751006
E-mail: <rasaniyareena@gmail.com>

P32512

Respondent: The General Manager
State Bank of India, HR Department
Local Head Office, 111-PT, J.N. Marg
Unit-III, Bhubaneswar – 751001
E-mail: <agmphr.lhobhu@sbi.co.in>

P32513

Complainant: 40% locomotor disability

GIST of the Complaint:

Complainant Ms. Reena B Rasaniya vide complaint dated **06.12.2021** inter-alia submitted that she had applied for exemption from attending office and requested for work from home on 01.11.2021 but her application was turned down by the authority.

2. The matter was taken up with the Respondent vide letter dated **16.12.2021** under Section 75 of the RPwD Act, 2016.

3. Assistant General Manager (HR), State Bank of India vide letter dated **29.12.2021** inter-alia submitted that Ms. Rasaniya is working in the Bank as Assistant Manager and is posted at their Centralized Pension Processing Centre (CPPC), Bhubaneswar. During the peak Covid-19 period, she was exempted from attending office. They further submitted that DGM (CS&OPS), Local Head Office, Bhubaneswar being the Appropriate Authority has considered her request and allowed her exemption from attending office from 01.11.2021 to 31.12.2021. The Authority has further advised Ms. Rasaniya to submit an application alongwith fresh certificate from the Bank's Medical Officer in case exemption from attending office is sought after 31.12.2021.

....2.....

4. Complainant vide rejoinder dated **18.01.2022** submitted that Bank has sought a fresh Medical certificate w.e.f. 01.01.2022 for availing exemption from attending office which is against the Bank's guidelines and laid down principles of medical practice too. She has requested to direct the Bank to follow the exemption instructions without any superfluous conditions.

5. After considering the respondent's reply dated **29.12.2021** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **21.04.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **21.04.2022**. The following were present:

- Ms. Reena B Rasaniya – complainant
- Shri Paresh Chandra Parikh, Deputy General Manager on behalf of respondent

Observation/Recommendations:

6. Complainant submits that in Order to avail 'work from home' facility during Covid restrictions, Respondent is asking her to submit Medical Certificate to prove that she is facing hardships.

7. Respondent has refuted the claims and submitted that from 01.04.2020 till 30.09.2020 she was exempted from attending office. From 01.10.2020 till 31.03.2021 she was on maternity leave. From 16.04.2021 till 31.12.2021 she was exempted from attending office. For time period mentioned above she was not asked to submit anything. She was exempted from attending office without any condition. Considering the resumption of normal atmosphere, the Respondent decided to revoke blanket exemption and now employees are exempted from attending office on case to case basis. Hence, the Complainant was asked to submit 'medical certificate' to avail the exemption from January 2022 onwards.

8. During online hearing, the Complainant herself submitted that the issue has now been resolved. She was given exemption in attending office in accordance with the guidelines of the Respondent establishment. Since the issue is now resolved, intervention of this Court in the present Complaint is not warranted.

9. Case is disposed off.



(Upma Srivastava)
Commissioner for Persons with Disabilities



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: 13145/1023/2022

Complainant: Shri Anand Singh
A5, Type 5, Tower 18
NBCC Colony, East Kidwai Nagar
New Delhi – 110023
Email: <alok.singh@orientalinsurance.co.in>

12325714

Respondent: The Chairman & Managing Director
The Oriental Insurance Company Ltd
"Oriental House", A-25/27, Asaf Ali Road
New Delhi – 110002
Email: <anjan.dey@orientalinsurance.co.in>

12325715

Complainant: Shri Alok Kumar Singh, 100% Chronic Neurological Conditions

GIST of the Complaint:

Complainant vide complaint dated **21.02.2022** submitted that his elder brother Shri Alok Kumar Singh is working in the Oriental Insurance Company as Chief Manager and he was diagnosed with a very rare neurological degenerative disease – Amyotrophic lateral sclerosis (ALS) in April 2020. The disease is progressive, meaning the symptoms get worse over time and there is no cure for ALS. Therefore, he is unable to attend his office for almost a year and his Company has put him on Leave Without Pay starting December 2021. He has requested to (a) continuity in service in the same grade along with same service conditions and benefits associated with the grade (b) Continue with the same pay, make him eligible to receive his annual salary increment and allowances as per the terms of employment and as being paid to similar employees currently. (c) Continue with the same residential accommodation as per the entitlement of entitlement of employees of similar grade (d) Mediclaim cover.

2. The matter was taken up with the Respondent vide letter dated **09.03.2022** under Section 75 of the RPwD Act, 2016 but no response has been received from the respondent. Therefore, hearing scheduled on **21.04.2022**.

[Signature]

...2...

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **21.04.2022**. The following were present:

- Shri Anand Singh & Adv. Chandra Shekhar Yadav
- Sri Anil Saxena DGM along with Sri Vikas Chaddha on behalf of respondent

Observation/Recommendations:

3. Complaint filed on behalf of the employee of the Respondent establishment (hereinafter referred as 'beneficiary'). Beneficiary is Chief Manager. He submits that in April 2020 he was diagnosed with rare neurological disease called 'Amyotrophic Lateral Sclerosis' (ALS). This disease falls under specified disability under head 'muscular dystrophy'. He is not able to attend office and the Respondent has put him on 'Leave without Pay' starting since December 2021.

4. Respondent submits that Central government has delegated power to frame leave rules and other service rules to Board of Companies. In the rules framed by Board of Companies no relaxation in granting leaves is given to divyang employees. Section 20 lays down that if employee acquired disability, he cannot be terminated because of his disability. **However, this provision is not applicable in the present case because it only protects those employees who acquire disability and are able to perform some work. This provision is not applicable on those employees who are totally incapacitated and cannot perform any work at all.**

5. Further, during online hearing Respondent submitted that **General Insurance Business (Nationalisation) Act, 1972 has an overriding effect over Rights of Persons with Disabilities Act, 2016.**

6. Stand taken by the Respondent mirrors lack of legal clarity and unsympathetic attitude of the Respondent. Two issues which need consideration of this Court are:-

- a) Whether General Insurance Business (Nationalisation) Act, 1972 supersedes Rights of Persons with Disabilities Act, 2016; and
- b) Whether an employee who has become totally incapacitated is not covered under the protection of Section 20(4) of Rights of Persons with Disabilities Act, 2016.



....3...

....3....

7. The issue of conflict of two statutes can be resolved by the applicability of well accepted maxim *generalia specialibus non derogant*. This maxim means that, for the purposes of interpretation of two statutes in apparent conflict, the provisions of a general statute must yield to those of a special one. Now question arises which is general and which is special statute in the present case. The case is related to rights of divyangjan. Issues or grievances related to insurance law are not even remotely connected with the grievances raised in the present Complaint. Hence, it is clear that when issues related to disability rights need to be resolved, special statute will be the one which is specifically enacted to protect and confer disability rights. General Insurance Business (Nationalisation) Act, 1972 is the special statute in the context of 'Insurance Business'. It was not enacted with respect to disability rights. On the other hand, the Rights of Persons with Disabilities Act, 2016 was enacted by the Indian Parliament to fulfill its commitments under the UN Convention on the Rights of Persons with Disabilities.

8. Hence, as far as present Complaint is concerned which has issues related to disability rights only, RPwD Act, 2016 can only be considered as special statute and the other statute, namely General Insurance Business (Nationalisation) Act, 1972 is considered as 'general' statute. As per the law, in the present Complaint, general statute shall acceded to the special provisions hence, RPwD Act, 2016 shall prevail over the General Insurance Business (Nationalisation) Act, 1972.

9. Coming to the second issue of applicability of Section 20(4) of RPwD Act, 2016, it is prudent to start by mentioning the bare provision –

SECTION 20 - NON-DISCRIMINATION IN EMPLOYMENT - (4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

...A..

...4....

10. Subsection 4 of Section 20 is divided into three parts. Part one which is the main provision protects the employment rights of the employees who acquire disability during service. It protects such employees from termination from service or from reduction in rank. Second part is proviso of the subsection. It contemplates a situation when the employee cannot perform the job which he was already performing because of the nature of his disability. Section provides that in such cases also, the employee cannot be terminated and he has to be adjusted against another post, functions of which can be performed by the divyang employee.

11. Third part is the one which is applicable in the present Complaint. It contemplates such a situation when an employee is precluded from holding any post in the establishment. The section provides that in such a situation, employee cannot be terminated from the services. Respondent shall have to adjust such an employee against supernumerary post. Respondent's contention that this section is not applicable in cases of those employees who become totally incapacitated is negated by phrase - "**...if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post ...**".

12. It is indispensable to mention judgment of Hon'ble Supreme Court delivered in Kunal Singh v. Union of India; 2003 (4) SCC 524. In this case the hon'ble Supreme Court reinstated the services of the divyang employee who acquired disability during service and was considered permanently incapacitated from service. Relevant para of the judgment are reproduced below -

"Merely because under Rule 38 of CCS Pension Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act."

....5....

13. The Respondent may also refer to another rule of interpretation of statute, known as 'Beneficial Interpretation' for guidance on the issue of interpretation of Rights of Persons with Disabilities Act, 2016 in the present case as well as in cases which may arise in future. In the case of **Alembic Chemical Works v Workman; AIR 1961 SC 647**, an industrial tribunal awarded more number of paid leaves to the workers than what Section 79(1) of Factories Act recommended. This was challenged by the appellant. SC held that the enactment being welfare legislation for the workers, it had to be beneficially constructed in the favor of worker and thus, if the words are capable of two meanings, the one that gives benefit to the workers must be used.

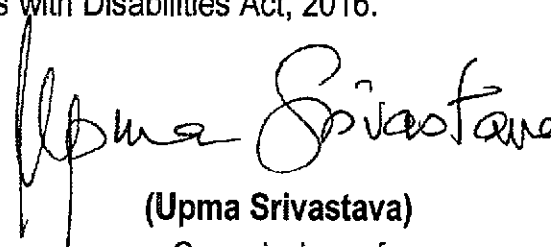
14. Similarly, in judgment of Kunal Singh (mentioned above), Court held

"In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act"

15. This Court concludes that the Respondent has violated provisions of Section 20(4) of Rights of Persons with Disabilities Act, 2016. Hence, this Court recommends that the Respondent shall keep the employee on supernumerary post with all service benefits. Further, this Court recommends that if salary or any other monetary benefits were deducted by the Respondent, the same shall also be restored.

16. 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.

17. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 06.05.2022



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: 13090/1024/2022

Complainant: Shri Mahesh Chand

Village – Baraula, Sector – 49

Noida, Gautam Budh Nagar, Uttar Pradesh – 201301

Mob: 09540902482

Respondent: The Registrar

Gautam Buddha University

Greater Noida, Gautam Buddha Nagar, Uttar Pradesh

E-mail: <rpuria@gbu.ac.in> <info@gbu.ac.in>

Tel: 0120-2344211

Complainant: 70% locomotor disabilities

GIST of the Complaint:

प्रार्थी श्री महेश चन्द्र का अपनी शिकायत दिनांक 29.09.2021 में कहना है कि वह गौतम बुद्ध विश्वविद्यालय के बोधिसत्व डॉ भीमराव अम्बेडकर पुस्तकालय में सन् 2010 से लगातार कॉन्टेक्ट बेसिस पर अनुचर पद पर कार्यरत है। प्रार्थी ने स्थायी नियुक्ति हेतु प्रार्थना कि है।

2. The matter was taken up with the Respondent vide letter dated 09.02.2022 under Section 75 of the RPwD Act, 2016 but despite reminder dated 16.03.2022, no response has been received from the respondent.

Observation/Recommendations:

4. After perusal of documents available on record, Court is in view that there is no provisions for mandatory regularization of contractual employees as per extant Rules and instructions of Government of India. Therefore, no intervention of this Court is warranted at this stage.

5. Accordingly, the Case is disposed off.

Upma Srivastava

(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 06.05.2022



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: 12982/1021/2021

Complainant: Shri Sunil Kumar Sahu
 E-mail: <sunilkumarsahu@powergrid.in>

— P34520

Respondent: The General Manager
 Power Grid Corporation of India
 765/400 KV Service Station, 17 km Milestone
 NH 130, Bilaspur Khatgora Road, Bharati
 Singaari, Bilaspur, Chhatishgarh – 495442
 E-mail: <mayank.singh@powergrid.in>

— P34521

Complainant: 55% locomotor disability

GIST of the Complaint:

प्रार्थी श्री सुनील कुमार साहू का अपनी शिकायत दिनांक 03.11.2021 में कहना है कि वह पावरग्रिड कार्पोरेशन प. क्षे. पा. प्र. --1 के अंतर्गत 765 के.वी उपकेन्द्र, बिलासपुर में दिनांक 13.01.2009 से कनिष्ठ अभियंता के पद पर कार्यरत है तथा दिनांक 01.04.2019 से सुपरवाइजर श्रेणी एस-4 (ग्रुप-ए) में पदोन्नति हेतु उम्मीदवार है इसलिए उन्होंने दिनांक 18.07.2021 को डी.पी.सी. पदोन्नति हेतु परीक्षा दी परन्तु लिखित परीक्षा के प्राप्तांक के बारे में सूचना प्राप्त हुए बिना पास लिस्ट से उनका नाम वंचित रखा गया। प्रार्थी का आगे कहना है कि उक्त डी.पी.सी परीक्षा आयोजित करने के पूर्व कार्पोरेशन ने दिव्यांग उम्मीदवारों के संबंध में आरक्षण रोस्टर न तो तैयार किया न ही पालन किया।

2. The matter was taken up with the Respondent vide letter dated 18.11.2021 under Section 75 of the RPwD Act, 2016.

3. In response, respondent vide letter dated 23.12.2021 inter-alia submitted that Shri Sahu has joined in PowerGrid on 13.01.2009 as Diploma Trainee (Electrical) and regularized as Jr. Engineer on 13.01.2010 and thereafter he has been promoted from S1 to S2 Grade on 01.04.2013, further promoted from S2 to S3 Grade on 01.04.2016 and from S3 to S4 Grade on 01.04.2019. He further submitted that as per PowerGrid's Promotion policy, an employee in S4 Grade meeting qualifying criteria is eligible for consideration for promotion to Executive Cadre subject to qualifying a written test followed by interview. Shri Sahu could not qualify in written test therefore he was not called for interview.



Sign.

Signature

...2....

4. प्रार्थी का अपने प्रति उत्तर दिनांक 13.01.2022 में कहना है कि वह एकमात्र दिव्यांग उम्मीदवार थे इसके बावजूद कार्पोरेशन ने लिखित परीक्षा में 105 उम्मीदवारों को एस -4 से ई-2 में पदोन्नत किया और उन्हें पदोन्नति से बाहर कर दिया।

5. After considering the respondent's reply dated 23.12.2021 and the complainant's rejoinder dated 13.01.2022, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 15.02.2022 but due to technical difficulties, hearing rescheduled on 19.04.2022.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 19.04.2022. The following were present:

- Shri Sunil Kumar Sahu – complainant
- Shri Mayank Singh, General Manager, Shri R. Narayan, Shri V.P. Singh on behalf of respondent

Observation/Recommendations:

6. Complainant submits that currently he is posted at Bilaspur. He claims that he scored maximum marks in promotion exam from Supervisor post (Grade B) to Executive post (Group A). However he was denied promotion and was declared failed in the examination. Respondent has not granted reservation in promotion. Respondent harasses the Complainant. On number of occasions, Complainant is forced to stand for long.

7. The three main points raised by the Complainant are related to a) reservation in promotion; b) discrimination with divyang employees in the matters of promotion; and c) harassment of the Complainant.

RESERVATION IN PROMOTION

8. Issue raised by the Complainant is of general nature. Complainant prays before this Court to recommend the Respondent to extend reservation in promotion for divyangjan.

1. The same issue has been settled by the Apex Court of this country in the matter of **SIDDARAJU v. STATE OF KARNATAKA & ORS.; CIVIL APPEAL No. 1567 of 2017**, by Order dated 28.09.2021.
2. Since, the issue has already been decided by the Hon'ble Supreme Court hence intervention of this Court in the present Complaint is not warranted.

....3....



....3...

DISCRIMINATION WITH DIVYANG EMPLOYEES IN THE MATTERS OF PROMOTION

9. During online hearing, Respondent informed this Court that divyang employees are not discriminated against in the matters of promotion. To substantiate its claim, Respondent informed that in the present promotion cycle as well as in previous promotion cycles, such divyang employees who were able to qualify the promotion exam on their own merits were promoted.

10. To substantiate the claim, the Respondent by email dated 23.04.2022 informed this Court that 02 employees in divyang category, namely Sri Ram Naresh Singh and Sri Arumugam M were promoted from S4 grade to E2 grade in DPC 2020. Hence on this issue this Court concludes that interference of this Court is not warranted.

HARASSMENT

11. During online hearing, Complainant informed that some officers of the Respondent establishment harasses the Complainant. He informs that when he was declared unsuccessful in the promotion examination, he filed a Complaint before the grievance redressal officer, who never gave any reply to the Complaints filed by him. He further alleges that at many times he is forced to stand for long hours and at several occasions sitting facility provided to him was also removed.

12. This Court is compelled to attract kind attention of the Respondent towards some provisions of Rights of Persons with Disabilities Act, 2016. Section 6 of the Act provides that the appropriate government shall take measures to protect divyangjan from cruel, inhuman and degrading treatment. Similarly Section 7 provides that the appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation. Common objectives of these provision is to create an atmosphere for divyangjan which is inclusive for divyangjan. Such inclusive environment must generate sense of security and must help divyangjan in focusing on other aspects of life.

13. For effective implementation of these provisions, the statute further provides that any person who violates any provision of this Act may be punished with fine upto Rs. 5 Lakhs. Similarly act of commission of insult or atrocities are punishable with punishment of imprisonment upto 5 years.


14. Hence, it is the utmost duty of the Respondent to ensure that all divyang employees of the Respondent establishment are treated with utmost respect and humility. It is positive obligation of the Respondent to provide such environment to divyang employees where they can feel safe and protected and work alongside with others with dignity. Failure to do the same will attract penal provisions of the Act.



....4...

15. Hence, this Court recommends that the Respondent shall conduct sensitization/awareness programme and shall ensure that the Complainant as well as other divyang employees of the establishment are not discriminated against.

16. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 06.05.2022





16

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: 13049/1021/2021

Complainant: Shri Rajendra Singh Yadav
Section Officer
National JALMA Institute for Leprosy &
other Mycobacterial Diseases, Taiganj, Agra – 282004
Email: <yadavjjjalma@gmail.com>

1232518

Respondent: The Director General
Indian Council of Medical Research
Ansari Nagar, New Delhi – 110029
Email: <secy-dg@icmr.gov.in>

1232519

Complainant: 40% visual impairment

GIST of the Complaint:

Complainant Shri Rajendra Singh Yadav, Section Officer vide complaint dated 28.12.2021 submitted that he was initially appointed to the post of LDC on 28.11.1985 and subsequently promoted to the post of UDC on 01.09.1994, Assistant on 31.01.2013 and further promoted to the post of Section Officer on 21.09.20219. He further submitted that Shri Rakesh Kumar Saxena who was junior to him was promoted to the post of Section Officer on 15.12.2018 by DPC at NJIL&OMD, Agra. He further submitted that as per seniority, he should have been promoted to the post of Section Officer on date 15.12.2018. He alleged that respondent is not providing reservation to PwDs in promotion to the post of Administrative Officer.

2. The matter was taken up with the Respondent vide letter dated **04.01.2022** under Section 75 of the RPwD Act, 2016 but despite reminders dated **07.02.2022**, no response has been received from the respondent. Therefore, hearing scheduled on **21.04.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **21.04.2022**. The following were present:

- Shri Rajendra Singh Yadav – complainant
- Shri Yogesh Gupta on behalf of respondent

Observation/Recommendations:

3. Grievance is related to discrimination in the matter of promotion. Complainant claims that his junior was promoted to the post of 'Section Officer' before him. Important dates as mentioned by him are as follows-

- His appointment on the post of LDC - 28.11.1985
- Promotion to the post of UDC - 01.09.1994
- Appointment to the post of Assistant through LDCE - 31.01.2013; whereas his junior Rakesh Kumar Saxena promoted to the post of Assistant on - 19.09.2013.
- Promotion to the post of Section Officer - 21.09.2019; whereas his junior Rakesh Kumar Saxena promoted to the post of Section Officer on - 15.12.2018.

4. His grievance is that the employee junior to him was promoted before him.

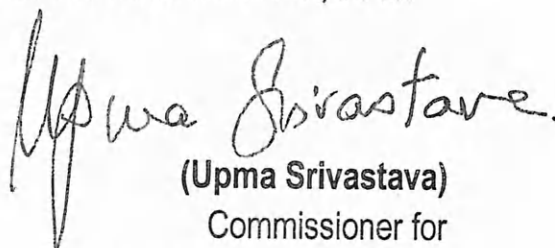
5. During online hearing, Respondent informed this Court that a Committee has been constituted to examine the whole issue. Committee is expected to file its conclusive report by 28.04.2022.

6. This Court recommends that the Respondent shall implement a report of the Committee and shall file copy of the Report along with compliance report before this Court before 15.05.2022.

7. This Court is inclined to dispose off this Complaint with liberty granted to the Complainant to approach this Court in case he is not satisfied with the report of the Committee or the action taken by the Respondent.

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.

9. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 06.05.2022



extra (18)

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. 12933/1014/2021

Complainant:

Shri Pankaj Tiwari,
US – 196B, Gali No.3,
Mandawali Fazalpur,
Delhi – 110 092
Email: pankaj.tiwari774@gmail.com

132522

Respondent:

Pt. Deen Dayal Upadhyaya National Institute for
Persons with Physical Disabilities,
(Through the Director)
4, Vishnu Digamber Marg, New Delhi – 110 002
Email: diriph@nic.in

132522

Affected Person: The complainant, a person with 82% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint on 29.09.2021 regarding the problems faced by persons with disabilities during the job fair organized by IPH on 25.09.2021.

1.2 The complainant submitted that he is the Captain of Delhi Divyang Cricket Team and National Para-Volleyball Player for Delhi. On 25.09.2021, the Respondent organized a job fair in which about 200 Divyangjan participated but the Divyangjan faced a lot of problems there during that job fair, which is detailed below:-

- No proper system for conducting the job fair.
- Candidates were not informed about the number of companies participating in the fair.
- Candidates reached at around 10 a.m. in the morning and registered themselves for the Job, but were made to wait till 4 p.m. when their

resumes were collected. After that the officials representing the company told them that they would be informed about the status of their application after 2-3 days.

- d) One company, The Paytm, took interview of Divyangjan but they told that the candidates residing outside Delhi would be selected.
- e) There was no proper place for sitting for Divyangjan candidates and they were made to sit outside bathrooms.

3. Submissions made by the Respondent:

3.1 The respondent filed their reply dated 15.12.2021 and submitted that the job fair and other activities named Divya Kaushal 2021 was organized at their Institute on the birth anniversary of Shri Pandit Deendayal Upadhyayaji on 25.09.2021 in association with NGO named IDEA-Saksham. The Divya Kaushal was the amalgamation of four main elements namely (i) HR Conclave (ii) Job Fair (200 PwDs attended the job fair) (iii) distribution of assistive devices to PwDs (28 devices were distributed) (iv) seed grant distributed to 25 PwDs with seed money amounting to ₹25,000/- each through bank cheques by the IDEA-Saksham. The COVID vaccination registrations were held in which PwDs were registered for Covid vaccination. An "Aspiration research study on jobs" was also conducted.

3.2 The job fair and other activities were conducted with a proper system including pre-screening of job aspirant and exploring demanding job roles, information given to NGOs, Deputing proper staff, budget approval, sufficient arrangement of food packets/water/tea, sitting arrangements, proper registration, compliance of COVIC guidelines (Distribution of marks, sufficient arrangement of Thermal screening and sanitizers). There were number of reputed companies who took part in the job fair, like Burger King, Flipkart, Tele Performance and Tech Mahindra. Apart from these National Career Centre, Ministry of Labour & Employment, NHFDC, Delhi SC/ST, Other Backward Classes, Minorities & Handicapped Financial & Development Corporation also participated in the fair. The information of their participation was displayed in the reception area as well as outside of their allotted rooms. A registration counter was set up from where the candidates were escorted to the main hall and tokens were distributed based on their needs whether it was a job fair, assistive devices etc. The volunteers were deputed to guide the candidates accordingly. Proper signage was also displayed on their allocated rooms where the candidates were screened/interviewed. The venue of the job fair was at ground floor. There



were sufficient sitting arrangement for the candidates at the reception area as well as at corridors and venue of interviews. Extra chairs were also arranged for the candidates.

3.3 The Respondent submitted that if the complainant, Shri Pankaj Tiwari has any suggestion / idea for better organizing these types of job fair, he may share the same with them.

4. Submission made in Rejoinder:

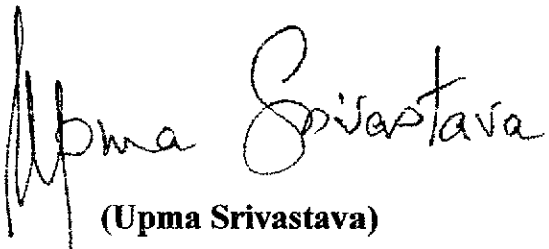
The respondent reply was forwarded to the complainant for submission of his Rejoinder, but no Rejoinder has been found received from the complainant.

5. Observation/Recommendations:

5.1 The reply filed by the respondent is satisfactory. No further intervention is required in this matter.

5.2 The case is disposed off.

Dated: 06.05.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



21

Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार / Government of India

Case No. 12962/1014/2021

Complainant:

Shri Manish Kumar,
C/o Shri Dharendra Kumar,
BCCL Quarter No.LC-07,
Near Bhaga Mod, MRF Baba Tyre,
In front of AQIB General Store,
Lucky Collection Building,
Dhanbad-828131 (Jharkhand)
Email: manishk08152@gmail.com

— P32524

Respondent:

The Chairman,
Indian Oil Corporation Ltd,
Corporate Office: 3079/3, J.B. Tito Marg,
Sadiq Nagar, New Delhi-110049
Email: chairman@indianoil.in

— P32525

Affected Person: The complainant, a person with 45% Locomotor Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 12.10.2021 (registered on 01.11.2021) regarding Physical Verification of the candidates with disabilities by Special Medical Board/Medical Experts by Indian Oil Corporation Ltd. (IOCL).

1.2 The complainant submitted that certain number of PwD candidates provisionally shortlisted for GD/GT/PI in recruitment of Engineers and Officers in IOCL through GATE-2021 might have genuine disability certificate but the assessment made in certificate is highly doubtful. Their disability is not so grave as to declare physically disabled.

1.3 The complainant prayed that IOCL be advised to conduct Medical Examination for physical verification of level of disability or the assessment of their degree of disability of all the candidates with disabilities by a fresh Medical Board for recruitment of Engineers and Officers in IOCL, before declaring their

(Page 1 of 2)

final Merit list/Final result, as per Para 5 of the DOP&T O.M. No.36035/02/2017-Estt (Res) DATED 15.01.2018, which reads as under:

“5. CERTIFICATE OF DISABILITY:

A person who wants to avail the benefit of reservation will have to submit a certificate of disability issued by a Competent Authority. Such certificate in the event of selection of such person for any post, will be subject to such verification/re-verification as may be decided by the competent authority.”

2. Submissions made by the Respondent:

IOCL filed their reply dated 30.11.2021 and submitted that the complainant Shri Manish Kumar had also made a similar complaint about two candidates – Mr. Aman Gupta and Mr. Gunjal Sagar Balasaheb – to us. On the basis of his complaint, their Disability Certificates were sent to the respective issuing authorities for verification. Since the action has already been taken, the request of the complainant is not appropriate.

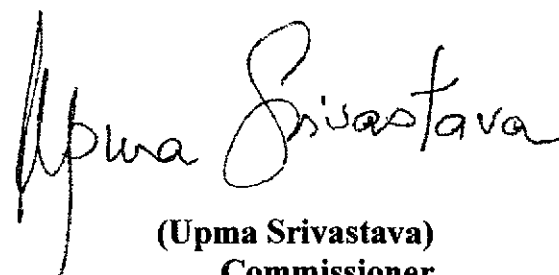
3. Submissions made in Rejoinder:

The complainant filed his rejoinder dated 16.12.2021 and reiterated his request.

4. Observation/Recommendations:

The reply filed by the Respondent is satisfactory. No further intervention is required in this matter. Accordingly, the case is disposed off.

Dated: 06.05.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



Extra (23)

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. 12832/1011/2021

Complainant:

Shri Vijay Garg,
 532, Modern Apartment,
 Plot No.5, Sector-15,
 Rohini, Delhi – 110 085
 Email: gargvijay31@gmail.com

— P32526

Respondents:

(1) The Registrar,
 School of Planning and Architecture,
 4 Block B, Beside State Bank of India,
 Indraprastha Marg, I.P. Estate,
 New Delhi – 110002
 Email: registrar@spa.ac.in

— P32522

(2) Ministry of Education,
 (Through the Secretary)
 Government of India,
 Shastri Bhawan, New Delhi – 110 001
 Email: secy.dhe@nic.in

— P32528

Affected Person: The complainant, a person with 40% locomotor disability

1. Gist of Complaint:

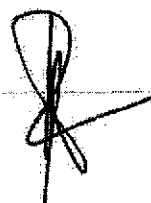
Shri Abhishek Prasad, Advocate for the complainant submitted that Shri Vijay Garg, a person with 40% locomotor disability, is an alumnus of the School of Planning and Architecture, New Delhi. He has been a Visiting Faculty Member since the year 2005. The complainant drew attentions to the advertisements published by the Respondent Institute since the year 2008 inviting applications for vacancies in faculty positions reserved for PwDs. He submitted that the Institute is not making appointments against the vacancies notified/reserved for persons with disabilities despite advertising for the same for a period of about 13 years. Despite of lapse of about 13 years no appointments have been made by the Institute under the PwD reserved category and the posts against the said category

1 | Page

continue to remain vacant. The Institute has not filled the said vacancies. He submitted that in the instant case the Respondent Institute by its own admission at the very least had one eligible candidate to appoint/fill the vacancy, viz, the Complainant. The Respondent Institute in its letter dated 28.06.2017 had duly recorded that Complainant was eligible to be appointed as a Professor. Not only does the Complainant fulfil all the eligibility criteria but the Complainant has been associated with the Respondent Institute as a visiting faculty since many years. Further, the Complainant applied all throughout and had been even called for interviews on multiple occasions (as recently as 15.07.2021). However no appointments have been made so far.

2. Submissions made by Respondents:

2.1 The Respondent No.1 filed their reply dated 21.09.2021 and submitted that the Complainant has not made any distinction between Visiting Faculty, Visiting Professor and Regular Professor. While the Visiting Faculty is appointed for one semester (4 months) and paid on an hourly basis, a Visiting Professor is appointed for one semester (4 months) but paid on a monthly basis. This is purely a temporary and adhoc arrangement given from time to time in order to ensure that the students do not suffer during the absence of full time faculty. As and when full time faculty are appointed, the engagement of Visiting Faculty and Visiting Professors is done away with. It is only a stop gap arrangement and the persons so appointed are not interviewed for selection before appointment. Therefore, the engaged visiting Faculties / Professors do not fulfil the criteria of the relevant Recruitment Rules in terms of Educational Qualifications and experience. Their responsibilities are also limited. However, in the case of full time Professors, they are appointed based on approved Recruitment Rules and after due selection committee interview process. Visiting Faculty and Visiting Professors work under the supervision of a full time Professor who is the head of the department. Full time Professors also undertake research projects, undertake doctoral research guidance for Ph.D. Scholars, publish papers etc. in addition to various other administrative responsibilities. Accordingly, while the emoluments of a Visiting Faculty is only from Rs.1000/- to Rs.1300/- per hour as per their experience, that of a Visiting Professor is Rs.70,000/- per month, and that of a regular Professor is as much as Rs.2,37,268/- per month approx. The complainant intentionally and deliberately did not disclose this difference before this Court regarding distinction between the Visiting Faculty, Visiting Professor an Professor and attempted to make out a case that if one could be a Visiting Faculty/Visiting Professor, then one could also be a full time Professor as if the same were having same status and requirements.



2.2 The Selection Committee, amongst the 26 candidates interviewed including the complainant, had selected 04 persons as Professors in the Department of Architecture and did not find the complainant a suitable person to be appointed as Professor in the Department of Architecture. The complainant's statement that no appointments were made under the PwD category in the last 13 years is also incorrect since around one year back, one Associate Professor had already been found suitable and appointed as an Associate Professor under the PwD category. The Respondent further stated that one post of Professor reserved for PwD category as per Advertisement dated 13-19 July 2019 was open for any eligible and suitable candidate from the said category across all these many Departments for the post of Professor.

2.3 The complainant cannot force any Institution or any Court or Commission to direct the Selection Committee to appoint an incompetent or unsuitable person only for the mere sake of filling of any post in the PwD category.

3. Submission made in Rejoinder:

3.1 The complainant in his rejoinder dated 14.10.2021 submitted that he had not filed the present complaint seeking his appointment against the reserved PwD posts, but rather to ensure that the vacancies are filled with any eligible physically disabled candidates and that the reserved posts should not be left vacant as the same defeats the objective of the RPwD Act, 2016.

3.2 The complainant has been appointed as a Visiting Faculty/Professor as well as a member of Jury for periodic evaluation of seasonal records on various occasions over a span of 13 years but the Respondent No. 1 alleged that the Complainant was not eligible /qualified /competent to be appointed as a "Regular" Professor. The Respondent No. 1 submitted that had Respondent No.1 found the Complainant to be ineligible or incompetent, the Respondent No.1 would not have shortlisted and called the Complainant for interview for multiple times during the span of 13 years. The appointment of a PwD and that too recently (i.e. in the year 2020, as per the Reply filed by Respondent No.1) does not validate or justify the non-appointment of PwD against the reserved posts for a period of about 13 years. The Respondent No.1 sought to have made appointments by adopting a relaxed standard. This would have ensured that the objective and legislative intent of the Act was not defeated.

5. Hearing:

5.1 A hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 18.11.2021. The following persons were present during the hearing:-



- (1) Shri Vijay Garg, the complainant in person
- (2) Ms. Harshita Raghuwanshi, Advocate; and Shri Vibhash Tripathi (Legal Cell) for the Respondent No.1

5.2 After hearing both the parties, the Respondent No.1 was directed to answer the following questions within 07 days:-

- a) How many total number of Group 'A' teaching posts are there in Respondent establishment?
- b) How many Group 'A' teaching posts were advertised in year 2019 and how many of such vacancies were reserved for Persons with Benchmark Disabilities?
- c) Against the Group 'A' teaching vacancies advertised in year 2019 how many were filled and remained vacant?
- d) How many vacancies of the post of Professor were advertised in year 2019 and how many candidates appeared in the recruitment process?
- e) Since year 2008 how many Group 'A' teaching posts remained unfilled in each recruitment cycle and whether any special recruitment drive was conducted to fill such vacancies which remained unfilled?

5.3 The Respondent No.1 filed their vide letter dated 14.12.2021.

6. Observations & Recommendations:

6.1 The 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 is a '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'. The complainant/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 After online hearing conducted on 18.11.2021, 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, 02 vacancies were reserved for divyangjan, out of which 01 remained vacant.

6.4 There are two issues which emerged 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.

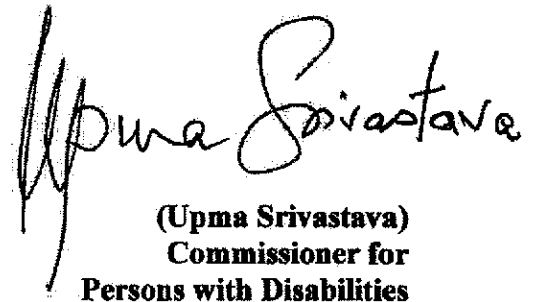
6.5 Complainant claimed that he was visiting faculty and was eligible to be appointed against the teaching post. This Court does not have mandate to examine the eligibility of any person for appointment to the post. Hence, this Court is not inclined to interfere in the issue of appointment of the Complainant.

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, fill backlog through special recruitment drive providing reasonable accommodations & relax criteria and shall reserve 4% of such vacancies for Divyangjan.

6.8 The case is disposed off.

Dated: 06.05.2022


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

28

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: 13110/1022/2022

Shri Aditya Hemant Sonkusare : **Complainant**

R/o Plot No. 106, Vijayanand Society

Shobha Apartment, Narendra Nagar,

Behind Indian Oil Petrol Pump

Nagpur-440015

Mobile No: 08149915327

Email: Aditya.sonkussare07@gmail.com

732574

Versus

The Managing Director: **Respondent**

State Bank of India

State Bank Bhawan, 16th Floor,

Madam Cama Road,

Mumbai-400021

Email: agmhr.lhomah@sbi.co.in

Contact No: 022-26445211

732572

GIST OF COMPLAINT

The complainant having 40% Visual Impairment Disability has submitted in his complainant dated 05.02.2022 that he has applied online for the post of circle based officer in Visual Impairment (VI) category who suffered from partial blindness low vision category. The applicant has made the said application under appointment for visual impairment category with his all relevant education qualification along with medical certificate issued by the Medical Board. The complainant further submitted that the Manager of (NW-II), State Bank of India being the appointing authority has issued the selection and appointment order dated 17.03.2021 to the appellant for the post of Circle Based Officer and thereby directed the appellant to appear before the competent authority along with medical treatment papers for medical examination by Doctors on their panel and also directed to get their certificate. The complainant specifically submitted that in the 'selection-cum appointment letter dated 17.03.2021 and the consent & acceptance letter format dated 12.05.2021 are the general conditions and nowhere it is mentioned that the complainant should be posted at a particular branch of State Bank of India or it has nowhere mentioned that the complainant be posted permanently under the Administrative Office; Nanded which comes under the Maharashtra Circle. The appellant further submitted that in view of the directions issued by the Assistant General Manager (HR) of State Bank of India dated 18.06.2021, the appellant has joined and reported at the Administrative Office at Nanded on 22.06.2021. Chief Manager (HR) of Administrative Office SBI at Nanded has issued a communication dated 21.06.2021 and thereby deputed and given a posting of the appellant at Regional Business Office, Nanded (14196) as Circle Based Officer and directed to report at their end.

The complainant further submitted that complainant was selected and appointed as circle Based Officer at State Bank of India in Visual Impairment (VI) under Maharashtra Circle and therefore the Respondent State Bank of India can transfer and post the Appellant at his native place at any branch of State bank of India.

[Signature]

5वीं मंजिल, एनआईएसडी भवन, प्लॉट न०. 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)

Therefore, under the above said medical permanent partial disability and impairment vision (VI) and constant surgery to the right eye of the appellant, the respondent may be directed not to force the appellant to join his duty at State Bank of India, Tamsa Branch, Tahsil-Hatgaon, District Nanded till final disposal of this complaint/appeal. The complainant has requested CCPD Court to give directives to the respondent for transfer and post the appellant at any branch of State Bank of India at Nagpur, Maharashtra Circle and also may direct the respondent not to force the appellant to join the duty at State Bank of India, Tamsa Branch, Tehsil Hatgaon, District Nanded till final disposal of this complainant/appeal.

2. The matter was taken up with the Respondent vide letter dated 04.02.2022 under Section 75 of the RPwD Act, 2016.

3. In response, General Manager (NW-II), Maharashtra Circle, vide his letter dated 11.03.2022, submitted the following points:-

i) The complainant is a PwD candidate with Visual Impairment. All PwD candidates were asked for their posting preferences before their joining and were accordingly posted.

ii) The complainant did not provide any preference at that time as he was diagnosed with COVID-19 and completed his pre-joining formalities at a later date.

iii) The official was also notified of his proposed posting well in advance to his joining, and again at that time no representation was received from the official. Since the official has been appointed under Pwd category (VI), he has been transferred to his native place (AO Nagpur) as per his request.

Observations /Recommendations:

i) The respondent vide letter dated 11.03.2022, submitted that based on the representation dated 05.02.2022 of the complainant, the complainant has been posted at desired place. This Court appreciates the sympathetic view taken by the respondent. Since necessary relief has already been provided, there is no need of further intervention in the matter.

ii) This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 06.05.2022



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: 13158/1022/2022

Shri Gurpal Singh: **Complainant**

Hc (GD) Qtr. No. 02, Type -02

50th Btn, ITBPF, Sector-26

Panchkula, Haryana

Email: gurpal16874@gmail.com

Mobile No: 07529075444

—P32573

Versus

The Director General: **Respondent**

ITBPF, Block – 02, CGO Complex,

Lodhi Road, New Delhi-110003

Email: dg@itbp.gov.in

—P34574

GIST OF COMPLAINT

प्रार्थी का अपनी शिकायत पत्र दिनांक 06.03.2022 में कहना है कि उनके तीन पुत्र हैं जो मानसिक दिव्यांगता से पीड़ित हैं तथा जिनकी दिव्यांगता क्रमशः 75 प्रतिशत, 50 प्रतिशत, तथा 75 प्रतिशत है। प्रार्थी स्वयं भी पैरालाईसिस से पीड़ित हैं। शिकायतकर्ता का कहना है उनके तीनों पुत्रों का इलाज जी. एम. सी. एच. चण्डीगढ़ व पुर्नवास शिक्षा ग्रिड में जारी है। प्रार्थी ने अपने तीनों पुत्रों की मानसिक दिव्यांगता के प्रमाणपत्रों की लिपी लगाकर विभाग से अनुकम्पा के आधार पर स्थानान्तरण चण्डीगढ़ के नजदीक मांगी थी। विभाग ने प्रार्थी की अनुकम्पा के आधार पर मांगी गई स्थानान्तरण मामले को अनुपयुक्त मानकर मैरिट के आधार पर खारिज करके 29 वी वाहिनी, नक्सल आपरेशन युनिट, जबलपुर मध्य प्रदेश में स्थानान्तरण कर दिया। शिकायतकर्ता का आगे कहना है कि पिछले वर्ष भी प्रार्थी का स्थानान्तरण कर दिया गया तथा बार बार प्रार्थना करने पर भी प्रार्थी का आवेदन रद्द कर दिया गया। शिकायतकर्ता का आगे कहना है कि प्रार्थी का बार बार स्थानान्तरण किया जा रहा है। अतः शिकायतकर्ता ने मुख्य आयुक्त दिव्यांगजन से विनम्र निवेदन किया है कि प्रार्थी की तीनों मानसिक दिव्यांग पुत्रों के इलाज, दिव्यांगता व पुर्नवास को देखते हुए प्रार्थी की 29 वी वाहिनी नक्सल आपरेशन युनिट की स्थानान्तरण को रद्द करे तथा चण्डीगढ़ के नजदीक स्थानान्तरण करवाने की कृपा की जाए।

2. The matter was taken up with the Respondent vide letter dated 22.03.2022 under Section 75 of the RPwD Act, 2016.

3. In response, Section Officer (Estt), Directorate General, ITBPF, vide email dated 22.04.2022, submitted that the Indo-Tibetan Border Police Force is primarily a Border Guarding Force and deployed at Indo-China Border as well as Anti-Naxal Area. The Force has its own mechanism to regulate the transfer/ posting of Force personnel in view of the categorization of field formations and as per the prescribed tenure at respective formations/locations. Transfer/ posting of the Force personnel of ITBP is being regulated as per the guidelines/instructions contained in Standing Order No. 02/2020 dated 15.10.2020.

The respondent further submitted that the complainant was posted in Transport Bn, (Soft Area) Chandigarh from 22.05.2008 to 11.12.2017 (including period of deputation of UN Mission) which is almost 9 years. Thereafter, he had submitted his request for transfer to nearby Chandigarh located formations/units on compassionate ground and the same considered sympathetically and taking into consideration his grievance, he was transferred to 50h Bn, Ramgarh (Haryana) from Transport Bn (Chandigarh) vide this Directorate General O. No. 736199 dated 04.04.16, which is situated at the distance of 15 Km from Chandigarh.

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)

The complainant reported at 50 Bn, (Hard Area) Ramgarh (HRY) on transfer on 12.12.2017. On completion of his tenure in 50 Bn, his case was received for transfer in Junior Establishment Board-2021 on compassionate medical ground and he was transferred to 35 Bn, Mahidanda (UKD) in view of his 09 years of tenure in nearby Chandigarh formations/units. He represented against transfer. The same considered sympathetically and his transfer from 50 Bn, Ramgarh (HR) to 35h Bn, Mahidanda (UKD) was cancelled vide Dte Genl O. No. 18826-99 dtd 08.07.21.

The respondent further submitted that Since, he had already completed his tenure in 50 Bn, Ramgarh, hence, after one year, during Junior Establishment Board-2022, his case was again received on compassionate medical ground for transfer to Chandigarh located formations/units. His case was produced before Medical Board and as per medical opinion, he has been transferred to 29 Bn (ANO) vide Dte Genl O. No. 7600-99 dtd 15.02.22.

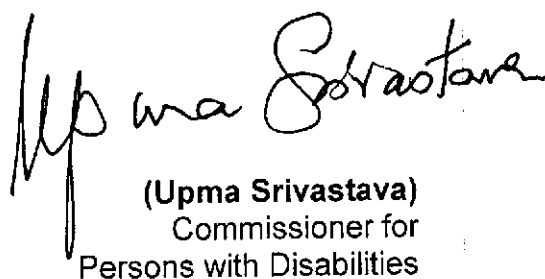
The respondent further stated that operational and administrative exigencies of the disciplined Force, such cases can be exempted from routine transfer up to some extent but they cannot be stationed at a particular place for a longer period. **However, taking into consideration his grievance, his transfer from 50h Bn to 29h Bn has been cancelled vide Dte Genl O. No. 15800-10 dated 22.04.2022.**

4. शिकायतकर्ता का अपने प्रत्युत्तर दिनांक 25.04.2022, में कहना है कि आई.टी.बी.पी के आदेश संख्या 15800-10 दिनांक 22.04.2022 के तहत 29 वी वाहिनी में की गई स्थानांतरण को रद्द कर दिया गया है। अतः शिकायतकर्ता ने आगे कहा है कि उनके तीनो पुत्र मानसिक दिव्यांगता से ग्रसित है तथा बहुत कष्ट भरी जिन्दगी जी रहे है। शिकायतकर्ता स्वयं भी पैरालाइसिस का रोगी है तथा बार बार हर साल शिकायतकर्ता की दूर दराज के दुर्गम व अति दुर्गम क्षेत्रों में गलत स्थानान्तरण कर दिया जाता है। अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उनके तीनो पुत्रों की मानसिक दिव्यांगता को देखते हुए उनका स्थानान्तरण चण्डीगढ़ के आस पास की बटालियनों में स्थानान्तरण किया जाए बार-बार गलत स्थानान्तरण ना करने के बारे में विभाग को आदेश जारी करे।

Observations /Recommendations:

i) The respondent vide email dated 22.04.2022, submitted that based on the representation dated 06.03.2022 of the complainant, it is seen that transfer of the complainant has been cancelled from 50th Bn to 29th Bn vide Dte Genl O. No. 15800-10 dated 22.04.2022. This Court appreciates the sympathetic view taken by the respondent. Since necessary orders have been issued by the respondent, there is no need of further intervention in the matter. It may also be ensured that given the adverse circumstances of the complainant he may be retained at a station at Chandigarh or nearby.

ii) This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 06.05.2022



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: 13069/1022/2022

Shri Santosh Vishram Nathe: **Complainant**
 PRT Music, KV Sukma, Chhattisgarh
 Email: santoshnathe09@gmail.com
 Mobile No: 09145565710

P32654

Versus

The Commissioner: **Respondent**
 Kendriya Vidyalaya Sangathan (HQ)
 18, Institutional Area,
 Shaheed Jeet Singh Marg
 New Delhi-110016
 Contact No: 011-26858570
 Email: sectionofficer2@gmail.com

P32655

GIST OF COMPLAINT

The complainant is 100% Visually Impaired PRT music teacher posted at KV Sukma Chhattisgarh which is a Naxal affected hard station. The complainant joined on 25th March 2019 as his first posting. The school location is 1400 KM away from his hometown Nashik Maharashtra. The complainant further submitted that being a 100% Visually Impaired it is very difficult for him to survive here. The complainant is facing lots of difficulties in his day to day life like arranging food, travelling and fulfilling his basic needs. The complainant further submitted that KVS authorities promised him that whenever transfer process will begin Persons with Disabilities will get preference. But it is very unfortunate he is not getting transfer despite having more transfer count. The complainant has requested CCPD Court to give directive to the respondent for transfer him Chhattisgarh to Nashik, Maharashtra.

2. The matter was taken up with the Respondent vide letter dated 04.02.2022 under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Commissioner, KVS (HQ), vide letter dated 02.03.2022, submitted that the transfer of teachers are effected as per transfer guidelines which are well defined and transparent. Appropriate weightage is given to each ground viz. Spouse/PH/LTR/DFP/MDG etc. being adduced by the teacher concerned for transfer as per transfer guidelines. Due to Covid-19 Pandemic in the country, annual transfers of teachers were not effected in the year 2020.

The respondent further submitted that as per records, the complainant has joined KVS on 25.03.2019 as PRT (Music) in K.V., Sukma, Chhattisgarh (Hard Station) on direct recruitment. The complainant had applied online annual request transfer for the year 2021 to the choice stations i.e. Nasik and Pune with having Transfer Counts 64. His request for transfer to his choice stations was considered during the annual request transfers for the year 2021 but he could not get the transfer.

The respondent further submitted that transfer due to non-completion of 03 years of tenure in K.V., Sukma, Chhattisgarh (Hard Station) as on 30.06.2021 as per transfer guidelines of KVS, 2021 which is reproduced. The respondent has informed that for transfer purpose the year / tenure is counted as on 30th June of the relevant year.

4. The complainant filed his rejoinder reply dated 06.04.2022, submitted that Person with Disabilities should be given posting near his or her hometown as possible. The complainant had been posted 1400KM away in hard station in 2019 recruitment. Kendriya Vidyalaya Sangathan issued a modification letter in the place of posting of PH candidates in the same year that is 17.10.2019 but could not be materialised. The complainant waited for near about 2 years for the modification in the place of posting. Thousands of employees who were recruited in the same recruitment 2019 have been given transfer with the same transfer policy in annual transfer 2021. The complainant is not satisfied with the comments submitted by the respondent. The complainant once again requested CCPD Court to transfer him from Chhattisgarh to Nashik, Maharashtra.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 26.04.2022. The following were present:

- i) Shri Santosh Vishram Nathe: **Complainant**
- ii) Shri Sri Dharmendra Patle, Asst. Commissioner: **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 fulfill 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 03.10.2018 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 the Respondent establishment on 25 March 2019. He joined as Music Teacher (PRT) in school situated in Sukma, Chattisgarh. Hometown is Nasik, Maharashtra. Applied for transfer twice, first in 2019 and later in 2021 but the application was rejected each time.

30. Respondent submits that it has transfer policy in which due weightage is given to divyang employees. Due to Covid, transfer process was not carried out in 2020. In 2021 he applied for transfer. Choices given by him are - Nasik and Pune. His request was not accepted



because of non completion of 3 years of tenure at Sukma, which is necessary for all the employees. For transfer purpose, tenure is calculated on 30th June of the relevant year.

31. During Online hearing Respondent's ignorant and unsympathetic approach was witnessed when the representative of the Respondent kept on insisting that the transfer was rejected because of the transfer policy of the Respondent establishment. He was again and again reminded about the provisions of the Rights of Persons with Disabilities act, 2016 which went into futile.

32. Complainant also informed this Court that in past, several transfer recommendations issued by this Court were not implemented by the Respondent establishment.

33. Two issues are necessary to be dealt with in detail, first is related with the present Complaint and the second is related with non implementation of the Recommendation-Orders of this Court.

34. The Case of the Complainant squarely falls under the guidelines laid down under O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T and O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. Both the O.Ms. provide for posting of government employees at their native place and also provide for giving preference to divyangjan in the matters of transfer and posting.

35. This Court is also inclined to mention recent judgment of Hon'ble Supreme Court delivered in SK NAUSAD RAHMAN & ORS. v. UNION OF INDIA, Civil Appeal No. 1243 of 2022 (judgment dated 10.03.2022). Hon'ble Supreme Court while deciding the constitutional validity of an Order banning Inter-Commissionerate Transfer of employees of the government establishment, held that the government establishment must adopt compassionate approach and create exceptions in transfer policy in the favour of divyangjan.

36. This Court recommends that the Respondent in the present Case shall make endeavours to search the avenues for the Complainant's transfer to her native district, i.e. Nasik.

37. Respondent shall also file the implementation report of this Recommendations Order within 3 months of the date of this Recommendation failing which, this Court shall presume that the Respondent has not implementation of this Recommendation and the matter shall be reported to the Parliament.

ISSUE OF NON IMPLEMENTATION

38. At the very outset this Court is inclined to attract the Respondent's attention to Section 77 of Rights of Persons with Disabilities Act, 2016. The provision is delineated below –

SECTION 77 - Powers of Chief Commissioner.

(1) The Chief Commissioner shall, for the purpose of discharging his functions under this Act, have the same powers of a civil Court as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any documents;
- (c) requisitioning any public record or copy thereof from any Court or office;
- (d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.

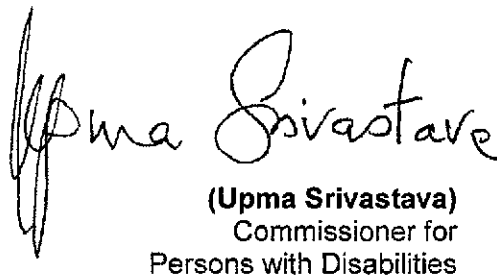
(2) Every proceeding before the Chief Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

39. This Court by using its powers under Section 77 directs the Respondent to produce following Records –

- a) Implementation report of all Recommendations issued by this Court relating to the issue of transfer and posting since January 2021.
- b) If any Recommendation has not been implemented, reasons for the same.

40. **Respondent is directed to produce the above two reports within 2 months of the date of this Recommendation, failing which, penal action including that of imprisonment and fine may be initiated against the responsible officers of the Respondent establishment.**

41. This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



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: 13067/1022/2022

Shri Praveen Kumar Sharma : **Complainant**

B-591, MIG DDA Flats,

East of Loni Road, Delhi-110093

Email: Praveen.choudhary730@gmail.com

Mobile No: 08287763582

R32656

Versus

The Chairman & Managing Director: **Respondent**

Food Corporation of India

16-20, Barakhamba Lane,

New Delhi-110001

Contact No: 011-43527697, 043527698

Email: dgmco@fci.gov.in

R32657

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 06.01.2022, में कहना है वह 90 प्रतिशत अस्थि बाधित/लोकोमोटर दिव्यांगजन है। शिकायतकर्ता क्षेत्रीय कार्यालय, राजेन्द्र भवन, भारतीय खाद्य निगम, राजेन्द्र भवन नई दिल्ली में कार्यरत है। शिकायतकर्ता का कहना है कि उन्हें (Dyslipidemia) बीमारी हो गई है जिसकी नियमित रूप से दवाई खानी होती है। शिकायतकर्ता किसी सहारे के चल, उठ, तथा खड़ा नहीं हो सकता तथा ताउम्र उनके साथ ये परेशानियां रहेगी और उम्र बढ़ने के साथ-साथ ये परेशानियां और बढ़ेगी। शिकायतकर्ता पैर की दिव्यांगता के कारण बिना किसी सहारे के चलने में अक्षम है और इन्हीं कारणों से प्रार्थी ने मंडल कार्यालय, शक्तिनगर, दिल्ली के लिए आवेदन किया था क्योंकि वह शिकायतकर्ता के घर से सबसे नजदीक (मात्र 13 किलोमीटर) है और घर से मंडल कार्यालय, शक्तिनगर आने में 30/40 मिनट का समय लगता है जबकि क्षेत्रीय कार्यालय राजेन्द्र भवन, दिल्ली घर से 19 किलोमीटर है तथा घर से कार्यालय आने में 80/90 मिनट का समय लगता है। अतः शिकायतकर्ता ने मुख्य आयुक्त दिव्यांगजन कोर्ट से विनम्र निवेदन किया है कि उनका स्थानांतरण मण्डल कार्यालय, शक्तिनगर, दिल्ली में करवाने की कृपा की जाए।

2. The matter was taken up with the Respondent vide letter dated 04.02.2022, under Section 75 of the RPwD Act, 2016.

3. In response, the respondent vide letter dated 23.03.2022, submitting that the allegations made in the complaint are baseless and are denied. The complainant posting has been made in accordance with the relevant rules and guidelines. There is no discrimination caused to the complainant and this complaint has been made with ill intention to pressurize the Corporation. The respondent further informed that complainant's home town is Delhi and he had applied for the post of Watchman in FCI West Zone and joined FCI on 22.06.2011 (F/N) as Watchman at FCI Bhopal. The complainant served at DO Ujjain from 29.06.2011 to 31.03.2016. He had been granted tenure transfer to North Zone considering his request and during his tenure transfer he was posted at DO Shakti Nagar, Delhi from 29.06.2016 to 25.08.2021.

[Signature]

The respondent further submitted that he has been transferred permanently to North Zone as per transfer policy guidelines of the Corporation and was posted to UP Region. However considering his conditions, his posting was changed to Delhi Region and he joined Delhi Region on 05.11.2021 (A/N). It is further informed that there is not much difference in terms of distance, as the distance between his present residential address as per record (B0591, MIG, DDA Flats, East Loni Road, Delhi-93) and FCI RO Delhi (his present posting) being 18 Kms. Wherein the work conditions are much better at Regional Office and his services can be utilized optimally here.

4. शिकायतकर्ता का अपने प्रत्युत्तर दिनांक 28.03.2022, में कहना है कि क्षेत्रीय कार्यालय द्वारा यह बताया गया है कि प्रार्थी की तैनाती नियमानुसार की गई है। यह जानकारी सही नहीं है क्षेत्रीय कार्यालय में दिव्यांगों के लिए अनुकूल शौचालय/फर्निचर तक नहीं है अगर क्षेत्रीय कार्यालय दिव्यांग कर्मचारियों के लिए इतना सुरक्षित है तो नवम्बर माह 2021 में एक महिला दिव्यांग कर्मचारी का स्थानांतरण मण्डल कार्यालय, शक्तिनगर, दिल्ली में क्यों किया गया। अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उनकी तकलीफों को देखते हुए उनका स्थानांतरण शक्तिनगर करवाने की कृपा की जाए।

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 05.05.2022. The following were present:

- i) Shri Praveen Kumar Sharma: **Complainant**
- ii) Ms. Kamna Gyan, AGM (P), Regional Office, Delhi: **Respondent**

Observations /Recommendations:

1. Complainant submits that he lives in Shaktinagar in Delhi and his place of posting is in Rajendra Place, Delhi. Earlier he was posted in District office of the Respondent establishment which is situated in Shaktinagar, Delhi. Because of the nature and percentage of his disability it is very difficult for him to reach his office because he has to change metro twice. Distance between his home and present place of posting (Rajinder Place) is 18-20 K.Ms. whereas, distance between his home and earlier place of posting was 13-15 K.Ms. only. He seeks transfer to his earlier place of posting, i.e. District Office Shaktinagar, Delhi. Rajendra Place office does not have proper furniture and washroom facilities for divyang employees.

2. Complainant further submitted that he joined on the post of Watchman and joined District Office in Ujjain, Madhya Pradesh on 29.06.2011 where he remained till 2016. Thereafter, on his own request he was transferred on temporary basis to North Zone and was posted in District Office situated in Shaktinagar from 29.04.2016 till 25.08.2021. Thereafter, taking into consideration his nature and percentage of disability, he was transferred permanently to North Zone and was posted first in Noida and later in Delhi. By Order dated 29.11.2021 he was transferred to Rajendra Place office from Shaktinagar Office on administrative grounds. Working conditions in Rajendra Place office are much better than the district office Shaktinagar.

3. The main problem which needs to be addressed here is that of commutation of the Complainant. This Court cannot overlook the fact that Delhi is a big city in which it is difficult to reach from one point to another for divyangjan as well as non-divyangjan. Difference of Distance between new and old offices is that of only 3 K.Ms. The main issue is that of

commutation. During online hearing, the Complainant submitted that he uses public transport for commutation. In order to reach new place of posting, i.e. in Rajinder Nagar office, he has to change public bus or metro train multiple times. From these facts and also considering the nature and percentage of disability of the Complainant, it appears that it was easier for him to reach his Shaktinagar office.

4. To resolve the issue quoting the concept of 'Reasonable Accommodation' is indispensable. Concept of Reasonable Accommodation is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016. As per provision, it means necessary and appropriate modification and adjustments, to ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 20(2) makes it positive obligation of every government establishment to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to divyang employee.

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

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

5. This principle is incorporated in RPwD Act, 2016 for effective implementation of rights recognised or guaranteed by the Act. Concept of 'Reasonable Accommodation' is not new in Indian legal jurisprudence. Hon'ble Supreme Court in JEEJA GHOSH v. UNION OF INDIA; (2016) 7 SCC 761, noted that a key component of equality is the principle of reasonable differentiation and specific measures must be undertaken, recognizing the different needs of persons with disabilities, to pave the way for substantive equality. Principle of 'Reasonable Accommodation' acknowledges that in order to rectify the social problem of discrimination with divyangs, affirmative conditions have to be created for facilitating the development of Divyangjans. This principle is not merely a formality, it is component of duty not to discriminate with Divyangjans hence the state is bound to provide these facilities to its Divyangjans. Hon'ble Supreme Court explained this in VIKASH KUMAR v. UPSC; 2021 SCC Online SC 84.

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



6. This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of divyang employees. This concept is not limited to making modification in physical infrastructure only. Modifications must be made in every aspect of the job which can cause substantial disadvantage to divyang employee in comparison with enabled employee. In addition to modification in physical features of infrastructure, modification can also be made in working hours, assessment of divyang employee, pre-promotion training, providing assistive aids and devices, posting of employee at such place where he can perform and achieve maximum result.

7. Considering the nature and percentage of disability, this Court recommends that the Respondent shall post the Complainant to his old office, i.e. office situated in Shaktinagar, Delhi.

8. **Respondent shall also file the implementation report of this Recommendation Order within 3 months of the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.**

9. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



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: 13042/1022/2021

Shri K. Veera Reddy: **Complainant**
ASO (Telangana Secretariat)
Hyderabad
Mobile No: 09989648489
Email: veeru.vijji@gmail.com

R32658

Versus

The Director: **Respondent**
Bhabha Atomic Research Centre (BARC)
Architectural & Structure Engineering Division
Anushaktinagar, Trombay, Mumbai-400085
Email: webmaster@barc.gov.in
Contact No: 022-25505050/25592000

R32659

GIST OF COMPLAINT

The complainant filed his complaint dated 23.12.2021, submitting that he is having 80% disability and working in the State of Telangana in Secretariat, Hyderabad and his wife Smt. K. Vijayalaxmi with 90% disability appointed as Technical Officer-D on 22.04.2016 in A&SED, BARC Mumbai. She have applied for transfer to any of the units of BARC/DAE Hyderabad, (Hometown) on physically challenged grounds as both are physically challenged with 80 to 90% disability on 24.08.2018 with relevant documents. She got reply on 23.12.2019 stating that transfer request has been considered in Atomic Miners Directorate for Exploration and Research (AMD) and Nuclear Fuel Complex (NFC) of Hyderabad respectively but has not acceded.

The complainant further submitted that his wife had clearly mentioned in her application that she is living alone in BARC (Mumbai) with her two kids 10 Yrs (daughter) and 6 Yrs old son who is suffering with unprovoked epileptical Seizures in sleep since November 2018. Doctors recommended that his son has to be taken special care till he attains 14 years and is undergoing treatment at Rainbow Hospital, Hyderabad and in BARC Hospital, Mumbai. During his son's unpredictable medical emergency, it's tough for his wife to handle the medical things alone in Mumbai due to her physical constraints. The complainant further submitted that it is very difficult for him as a physically challenged to travel from Hyderabad to Mumbai frequently, which is affecting his health and career. The complainant humbly requested CCPD Court to look into this matter and to get transfers his wife Smt. K. Vijayalaxmi, TO-D from Mumbai to any of the DAE/BARC facilities unit, Hyderabad on disability ground.

2. The matter was taken up with the Respondent vide letter dated 16.01.2022 under Section 75 of the RPwD Act, 2016.

3. In response, Deputy Establishment Officer, Bhabha Atomic Research Centre, Mumbai, vide his letter dated 25.03.2022, submitted that Smt. K. Vijayalaxmi was appointed as Technical Officer/D in A&SED, BARC on 22.04.2016. Transferred request submitted by Smt. K. Vijayalaxmi since 2018 to any DAE Units in Hyderabad as well as Heavy Water Board, Mumbai were duly forwarded to other constituent units of Department of Atomic Energy viz. Nuclear Fuel Complex, Hyderabad and Atomic Minerals Directorate, Hyderabad.

The respondent further submitted that complainant in his representation himself made it clear that efforts have been made by BARC to accommodate her transfer in Nuclear Fuel Complex, Hyderabad and Atomic Minerals Directorate, Hyderabad. Transfer application of Smt. K. Vijayalaxmi was also forwarded to Atomic Minerals Directorate, Hyderabad to consider her case. In reply, Atomic Minerals Directorate vide Note dated 15.02.2019, have informed that request was not acceded to since her experience does not suit Atomic Minerals Directorate requirements. The respondent further submitted that besides her application for mutual transfer to Heavy Water Board (CO), Mumbai which is also a constituent unit of Department of Atomic Energy was discussed in the Transfer Committee Meeting of BARC held on 20.01.2021. As per the recommendation of Transfer Committee, her request for transfer was forwarded to Heavy Water Board for consideration. In response, Heavy Water Board vide Note. Dated 01.07.2021 informed that after taking into consideration the requirement of the Heavy water Board, Mumbai, her request has not been acceded to. The respondent submitted that efforts have been made by BARC to facilitate transfer of Smt. K. Vijayalaxmi to nearby/Hometown (Nuclear Fuel Complex and Atomic Minerals Directorate, Hyderabad) as well as Heavy Water Board, Mumbai as per rules and procedures, but could not be acceded.

4. The complainant filed his rejoinder dated 18.04.2022, submitted that he is not satisfied with the comments submitted by the respondent. The complainant once again requested CCPD Court for transfer of his wife from Mumbai to any of the DAE/BARC facilities unit, Hyderabad on physically handicapped grounds or spouse grounds with humanity.

5. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 26.04.2022. The following were present:

- i) Shri K. Veera Reddy : **Complainant**
- ii) Shri Balaji, CVO: **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. Complaint, filed on behalf of the wife of the Complainant whereby it is submitted that both the Complainant and his wife are divyangjan. Wife is employed in Respondent establishment, whereas, the Complainant (husband) is employed in Telangana government. Wife is posted at Mumbai, whereas the hometown is Hyderabad. Request is being made for transfer to any unit of the Respondent situated in Hyderabad. In addition to disability, Complainant submits that their child is also suffering with condition of epileptic seizures. The son resides with the mother in Mumbai. It is very difficult for the mother to take care of the child alone.

30. Respondent submits that the Complainant's request for transfer, along with Bio Data and APARs was forwarded to two units of Respondent establishment situated in Hyderabad. Nuclear Fuel Complex, Hyderabad turned down the request. Atomic Mineral Directorate, Hyderabad also turned down the request on the ground that the employee's experience does not suit the functioning of the establishment. Application was also forwarded to Heavy Water Board, Mumbai for mutual transfer, which was also turned down.

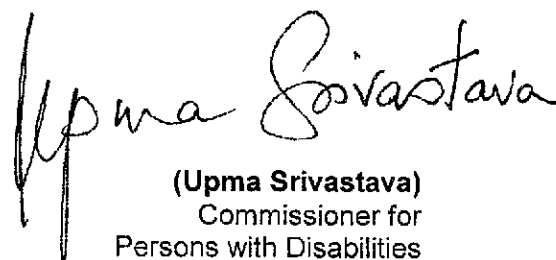
31. The Case of the Complainant squarely falls under the guidelines laid down under O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T and O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. Both the O.Ms. provide for posting of government employees at their native place and also provide for giving preference to divyangjan in the matters of transfer and posting.

32. This Court is also inclined to mention recent judgment of Hon'ble Supreme Court delivered in SK NAUSAD RAHMAN & ORS. v. UNION OF INDIA, Civil Appeal No. 1243 of 2022 (judgment dated 10.03.2022). Hon'ble Supreme Court while deciding the constitutional validity of an Order banning Inter-Commissionerate Transfer of employees of the government establishment, held that the government establishment must adopt compassionate approach and create exceptions in transfer policy in the favour of divyangjan.

33. This Court recommends that the Respondent in the present Case shall make endeavours to search the avenues for the Complainant's transfer to her native district, i.e. Hyderabad. To achieve this purpose, the Respondent shall strongly recommend the transfer of the Complainant to units situated in Hyderabad and ensure her accommodation in Hyderabad at the earliest.

34. Respondent shall also file the implementation report of this Recommendation Order within 3 months of the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.

35. This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



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: 13038/1022/2021

Shri Vijay Kumar Gupta: **Complainant**

SWO-A, PF No. 135684

Plot No. 45, Sahkar Nagar Maswanpur

Kanpur Uttar Pradesh

Mobile No: 08787288249

Email: vijay10dec84@gmail.com

R32660

Versus

The General Manager (HRD): **Respondent**

Central Bank of India

Chander Mukhi, Nariman Point

Mumbai-400021

Contact No: 022-66387891

Email: gmhrd@centralbank.co.in

R32661

GIST OF COMPLAINT

The complainant filed his complaint dated 16.12.2021, submitting that he was appointed in the Bank in Clerical Cadre on 02 April 2018 under Physically Challenged quota and he was posted to BAHRAICH (Ayodhya Region) since then. The complainant belong to Kanpur (Uttar Pradesh) and his posting to BAHRAICH (approx. 240 KM. away from Kanpur), is contrary to Government guidelines. He ought to have been posted in Kanpur, citing his disability is 55% at the time of joining. But still, he was serving there with full zeal and sincerity. The complainant further submitted that the water and climate of Bahraich did not suit him. In May 2020, while serving at Bahraich, he had encountered with certain health issues and subsequently, diagnosed to a severe Chronic Kidney disease. This was a tremendous shock for him as well as his family. Hence he rushed to Kanpur.

That there he was suggested for routine Hemodialysis (i.e Twice a week). Therefore, he had applied for his transfer to Kanpur, where best kidney treatment is available at Regency Hospital. Presently, he is undergoing dialysis twice in a week at Regency Hospital, Kanpur. The Doctor's have suggested that the permanent cure is Kidney Transplantation which would take time for some medical reasons. The complainant submitted that he require constant support from his family for his medication and treatment at Kanpur. Due to his health condition, it is not feasible for him to frequently commute from Bahraich to Kanpur for routine dialysis and also to deal with any emergency situation. The doctors have also put a restriction on his travel. The complainant has humbly requested CCPD Court to transfer his services permanently from Behraich to Kanpur on extreme compassionate grounds.

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, General Manager-HRD, vide his letter dated 10.03.2022, submitted that complainant joined the bank on 02.04.2018 at Branch Office Bahraich under administrative jurisdiction of Regional Office, Lucknow of the Bank.

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.ccd disabilities.nic.in

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

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

After reorganization of the administrative set-up, the said Branch Office was included in the administrative jurisdiction of Regional office Ayodhya in July 2019. The complainant applied for transfer on 11.12.2020 for three stations viz. Kanpur, Ranjithpur Bhaupur and Araul wherein, his position of waitlist was 36, 1 and 1 respectively, on normal ground.

The respondent further submitted that request for transfer to Kanpur Station and other Stations in the Kanpur District of none of the candidates were considered, due to overall deficit in the base station, i.e. Stations from where transfer was sought by candidates. Accordingly, transfer of the complainant could not be done. Thereafter, the complainant applied for request transfer on medical grounds on temporary basis for a period of 6 months. The request of the complainant was considered favourably with advice to report back to base branch after completion of the said period of the six months. However, the complainant did not report to the base branch after completion of the period of six months. The complainant has once again requested to transfer his service to Kanpur permanently. His request for the same has been already registered in MTR as mentioned above and the same would be considered as per norms in due course.

4. The complainant filed his rejoinder dated 22.03.2022, submitted that Bank Management have written his position in the waiting list for transfer to Kanpur is 36 and therefore, the transfer will be effected as and when the vacancy will arise. The complainant submitted that his both the kidneys have failed which require transplantation. At present he is undergoing dialysis twice in a week at Regency Hospital, Kanpur. The complainant has requested CCPD Court to kindly consider his case for permanent transfer from Bahraich to Kanpur on merit basis.

5. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 26.04.2022. The following were present:

- i) Shri Vijay Kumar Gupta: **Complainant**
- ii) Shri Ajeet Singh, DGM, Zonal Office 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.

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 08.10.2013, 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.

29. SK NAUSAD RAHMAN & ORS. v. UNION OF INDIA, Civil Appeal No. 1243 of 2022 (judgment dated 10.03.2022) - Hon'ble Supreme Court while deciding the constitutional validity of an Order banning Inter-Commissionerate Transfer of employees of the government

establishment, held that the government establishment must adopt compassionate approach and create exceptions in transfer policy in the favour of divyangjan.

PRESENT CASE

30. Complainant submits that he was appointed in the Respondent establishment on 02.04.2018. He was posted in Baharaich, U.P. In May 2020 where he was diagnosed with chronic Kidney disease, because of which he has to undergo Dialysis twice a week. Facility of Dialysis is available in Kanpur which is 240 K.Ms. away from Baharaich. He was transferred to Kanpur on temporary basis for 6 months. On 30.09.2021 he was relieved from Kanpur office and had to join Baharaich office. He applied for transfer to Kanpur which has not been decided yet.

31. Respondent submitted that the Complainant joined Respondent establishment on 02.04.2018. He requested for transfer on 11.12.2020. Choices filed by him were - Kanpur, Ranjitpur and Bhaupur. His application was rejected because there was overall deficit of employees in the base station, i.e. station where he is presently posted, i.e. Baharaich. He filed fresh application for transfer, which will be considered in due course.

32. During online hearing, the Respondent informed this Court that there are no vacancies available in Kanpur. Name of the Complainant is situated at Sr. No. 36 of the list prepared for transfer to Lucknow. Respondent further informed that the Complainant's transfer application shall be favourably considered and shall be forwarded to competent authority in Mumbai

33. The Case of the Complainant squarely falls under the guidelines laid down under O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T and O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. Both the O.Ms. provide for posting of government employees at their native place and also provide for giving preference to divyangjan in the matters of transfer and posting.

34. Apart from the issue of transfer, mentioning of the issue of Reasonable Accommodation is indispensable. Concept of Reasonable Accommodation is defined in Section 2(y) of Rights of Persons with Disabilities Act, 2016. As per provision, it means necessary and appropriate modification and adjustments, to ensure to Persons with Disabilities the enjoyment or exercise of rights with others. Further, Section 20(2) makes it positive obligation of every government establishment to provide 'Reasonable Accommodation' and appropriate barrier free and conducive environment to divyang employee.

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

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

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

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

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

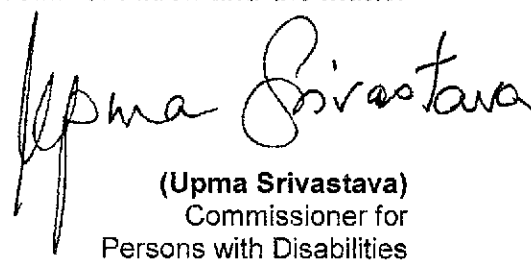
36. This concept is connected with the principle of equality mentioned in Article 14 of Indian Constitution. The concept helps Divyangjan to eliminate the limitations on the performance of divyang employees. This concept is not limited to making modification in physical infrastructure only. Modifications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

37. In the present case Respondent should apply the concept of Reasonable Accommodation and transfer the Complainant to Kanpur even though his name is at Sr. No. 36 of the transfer list. Necessity for relaxing the standards exists because of two reasons. First because of the disability of the Complainant and secondly because of the immediate medical treatment and attention needed by the Complainant which is not available in Bahraich where the Complainant is posted at present.

38. Hence, this Court recommends that the Respondent shall transfer the Complainant to Kanpur. Further, the Complainant is also recommended to write transfer application addressed to Sri Ajit Singh, DGM Zonal Office, Lucknow who, as promised shall consider it favourably and forward the same to competent authorities in Mumbai along with copy of this Order. Meanwhile a temporary post of the complainant to Kanpur is recommended.

39. Respondent shall also file the implementation report of this Recommendation Order within 3 months of the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.

40. This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



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: 13138/1022/2022

Shri Rakesh Kumar Kumawat : **Complainant**

Nursing Officer

Emp. No. 174745

Email: rakeshkumarhp1144@gmail.com

Versus

The Director General: **Respondent**

Employees State Insurance Corporation

Panchdeep Bhawan, Comrade Inderjeet Gupta

CIG Marg, New Delhi-110002

Email: dir-gen@esic.nic.in ; Vipin.kumar1@esic.nic.in

GIST OF COMPLAINT

The complainant is 41% Locomotor disability working in ESIC Hospital, Manesar as a Nursing Officer. The complainant & his wife are persons with disability. The complainant has been working in the hospital for the last 4 years. The complainant is facing lots of difficulties in his day to day life like arranging food, travelling and fulfilling his basic needs. The complainant further submitted that his parents are mostly ill and have to go to the village three to four times in a month to take care of them. The complainant has requested CCPD Court to give directive to the respondent for transfer him from Manesar to ESIC Hospital, Gurgaon

2. The matter was taken up with the Respondent vide letter dated 23.02.2022, under Section 75 of the RPwD Act, 2016. The respondent reply was received by email dated 02.05.2022.

3. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 05.05.2022. The following were present:

- i) Shri Rakesh Kumar Kumawat: **Complainant**
- ii) Shri Dharamvir Singh, Dy. Director Regional Office, Delhi: **Respondent**

Observations /Recommendations:

1. Complainant submits that he is working as Nursing Officer and is posted at Manesar hospital of the Respondent establishment. He submits that because of lack of transfer facilities, he finds it difficult to commute to his office. Hence seeks transfer to Gurugram hospital of the Respondent establishment.

2. Complainant joined Respondent establishment on 11.06.2018. Since his joining, he has been exempted from rotational transfer and has been posted at the same location in Manesar.

As per the Complainant's residential address available with the Respondent establishment, distance between his residence and present place of posting, i.e. Manesar hospital is only 5 K.Ms., whereas distance between Gurugram hospital and his residential address is 18 K.Ms. Hence, commutation is easier for him in Manesar rather than in Gurugram. Complainant's transfer application was also rejected because new transfer policy is in consideration.

3. This Court is satisfied with the reply filed by the Respondent. However, the respondent may consider the request of the complainant and take a sympathetic view for his transfer to Gurugram.

4. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



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: 13116/1022/2022

Shri Thanneeru Suresh: Complainant
Technician -B
128, 9th Avenue, Township " GSO"
Kalpakkam-603102
Email: suresh190189@gmail.com
Mobile No: 09444788430

1232662

Versus

The Director, Respondent
Department of Atomic Energy
Indira Gandhi Centre for Atomic Research
Administration, Kalpakkam-603102
Email: chairman@dae.gov.in; pro@dae.gov.in
Contact No: 091-22022543

1232663

GIST OF COMPLAINT

The complainant in his complaint dated 07.02.2022, submitted that he joined IGCAR on CAT-II 25.06.2016 and working as Technician-B (Fitter). He is working in the Stock Control Section, Stores Unit. The complainant and his wife, both are deaf & dumb (Persons with Disabilities). The complainant submitted that there is no relative at Kalkappam for any emergency to his family. The complainant is facing lots of problems in day to day life for his son's regular checkups in the hospitals

The complainant further submitted that his mother is staying along with him in IGCAR staff quarters to take care of him. They don't understand any language other than Telugu, due to which they find it difficult to communicate with other, especially in hospitals. The complainant submitted that he has younger sister who is staying alone in his native place in Telangana State. This situation is creating immense stress to him and his family. Being the elder son, he has to take care of his family. The complainant has requested CCPD Court to give directives for transfer him to NFC or AMD, Hyderabad.

2. The matter was taken up with the Respondent vide letter dated 15.02.2022 under Section 75 of the RPwD Act, 2016.

3. In response, Chief Administrative Officer, vide letter dated 24.03.2022, submitted that Dept. of Atomic Energy (DAE) practices a valued based work culture and people first attitude with an inclusive approach, equity and equality of opportunity and recognition form the core values of the work culture. The Department has set up a robust chain of command with multiple levels and in built checks and balances to ensure fairness and transparency and that there is no bias of any kind in dealing with problems of human relations and making crucial people oriented decisions.

The respondent further submitted that the complainant appointed against Special Recruitment Drive for PwDs vide Advt. No. 02/2015. He has applied for the post of Stipendiary Trainee Category-II (Fitter) earmarked for OI/BL/HH. The complainant belongs to Hearing Impairment category (HH) with 100% of disability. The complainant was suffering from profound hearing loss and Speech Impairment. The respondent further submitted that IGCAR has constituted a committee for analyzing transfer requests of employees. The complaint of the complainant has been examined by the Committee constituted for the purpose. IGCAR does not have any unit functioning in the other States of India than Tamil Nadu. Hence, any transfer request within Units of DAE will be on mutual basis and it requires willingness and acceptance of the recipient unit. Hence, the transfer request has not been recommended by the Committee. The respondent further submitted that recently the office has received an application on 29.11.2021 from the complainant for transfer on mutual basis to NFC Hyderabad. It is pertinent to mention that NFC, Hyderabad is the constituent unit under the aegis of Department of Atomic Energy. They will forward his application to the Unit concerned for consideration.

4. The complainant filed his rejoinder dated 25.04.2022, submitted that he got permission to carry basic mobile phone to office premises to enable him to contact his spouse in office hours. The complainant further requested to CCPD Court to transfer him from IGCAR, Kalpakkam to NFC Hyderabad.

Observations /Recommendations:

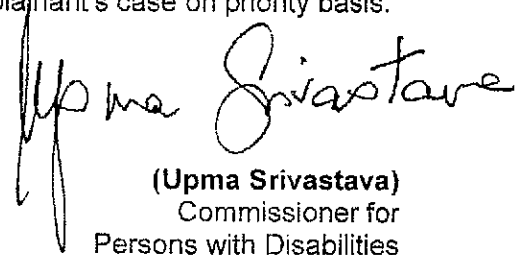
1. Complainant submits that currently he is posted in Kalpakkam, near Chennai in Tamil Nadu. His native place is Hyderabad, Telangana. He submits that because of the nature and disability he faces hardship in living in Tamil Nadu. In addition to these hardships caused because of the nature and percentage of disability, his care giver also facing problem in understanding and communicating in the regional language. Hence, he seeks transfer to Hyderabad, i.e. his native place.

2. Respondent submits that a committee was constituted to examine the transfer request of the Complainant. Further it submits that the request was denied because the Respondent establishment does not have any other unit functioning in any State other than Tamil Nadu. Transfer to other units of Department of Atomic Energy can only be done on mutual basis. Therefore the request was denied.

3. Further, Respondent submits that the Complainant has also filed application for 'mutual transfer' to Nuclear Fuel Complex, Hyderabad (hereafter referred as 'NFC Hyderabad'), Telangana. Respondent submits that this application shall be forwarded to NFC, Hyderabad for consideration.

4. This Court concludes that the Reply filed by the Respondent is satisfactory. Further this Court recommends that the Respondent may consider the Complainant's case on priority basis.

5. This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



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: 12903/1022/2021

Shri Y.R. Gudhe: **Complainant**

AGM HRMS 199600967

O/o DGM, BSNL, Akola

Email: yrgudhe@rediffmail.com

Mobile No: 09422917789

1232666

Versus

The Manager: **Respondent**

Bharat Sanchar Nigam Ltd

Maharashtra Telecom Circle,

BSNL Complex, Administrative Building

4th Floor, 'A' Wing, Staff Section, Juhu Road,

Santacruz (W), Mumbai-54

Email: agmstaffmh2018@gmail.com ; gmhradminmh@bsnl.co.in

1232662

GIST OF COMPLAINT

The complainant is working in the BSNL as Assistant General Manager. The complainant is submitting that his mother 72 years is residing with him having 70% locomotor disability and a person with specified disability. She is suffering from stroke @ right hemiparesis with Aphasia due to which she is locomotor disabled, right side of body is completely paralysed and lost her functionality. She cannot move herself from one place to another and she completely lost her ability to speak, understand written & verbal language. Due to these benchmark disabilities, she is bedridden and totally dependent to perform daily routine activities and needs high support for food, medicine and her daily care. There is nobody without him at home who can take care of her systematic rehabilitation as well as to ensure that she enjoy the right to equality, quality life with dignity and respect for her won integrity equality with other.

The complainant has further submitted several representation to the authority and his forcible struck off through ERP to stop salary intentionally by Circle office to impulse to manage bread, butter & huge medical expense on his bed ridden 70% paralyzed mother under tremendous pressure and frustration he opted to join at Akola. He is very much disappointed by the Recent Transfer orders in AGM cadre issued by Circle office and his genuine case not considered for transfer on deputation to Amravati. The complainant has requested to consider his complaint and posted to Amravati on deputation without TA/DA as a main caregiver for 70% locomotor disability.

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

In response, Dy. General Manager (HR & Legal) vide letter dated 18.11.2021, submitted that the complainant was transferred within MH circle by competent authority from Amravati to Satara vide order dated 24.08.2020. However, as per his own request and willingness, he was transferred to Akola, SSA within MH Circle vide order dated 22.05.2021. Accordingly, the complainant joined at Akola, SSA w.e.f. 25.05.2021.

The complainant is Executive i.e. Assistant General Manager. His complaint comprised of only baseless allegations against the management and some officers. The transfer from Amravati to Satara was issued as per the administrative acquirement of the office and that too within Maharashtra circle itself. The transfer order is strictly in accordance with the transfer policy in vogue, which also has clear provisions with regard to disability act.

The respondent further submitted that case for the complainant for retention at Amravati along with the representation of the executive dated 29.08.2020 was put up for review on dated 30.09.2020 along with the medical certificate of the Civil Surgeon on medical ground as a care giver. Due to non –submission of disability certificate from Medical authority by the complainant, the case was regretted by the competent authority dated 13.10.2020.

The complainant has submitted representation dated 16.10.2020 for cancellation of transfer order issued for Satara. The complainant was retained in Amravati SSA dated 19.12.2020 upto 31.03.2021 as a care-giver. The respondent further submitted that the complainant was transferred to Akola SSA dated 22.05.2021 as per his willingness application dated 08.04.2021 given by the complainant on the ground of the caregiver of the mother (Locomotor disability) in supersession of the earlier transfer order dated 24.08.2020. The complainant joined at Akola SSA dated 25.05.2021. Thus, the complainant has opted transfer as per his willingness and therefore nothing survives in his alleged complaint dated 09.09.2021. The respondent further stated that all the cases quoted by the complainant in the representation including complainant were given due consideration and on application of mind and the transfer policy of the BSNL, the competent authority has taken bonafide decision.

3. The complainant filed his rejoinder dated 29.11.2021, submitted that the CGMT, BSNL Maharashtra showed away his genuine request which was enclosed with disability certificate also submitted falsified information to most respected commission to hide their misdeed. The complainant submitted that when he was relieved through ERP on dated 23.02.2021, before the end of retention i.e. up to 31.03.2021 by CGMT MH, immediately he submitted representation through proper channel on dated 23.02.2021, along with disability certificate for exemption from transfer on medical ground as a caregiver.

The complainant stated that the case of cancellation of his transfer order was forwarded by GM BSNL Amravati to CGM BSNL, Mumbai office along with disability certificate of his mother on 25.02.2021. The complainant had again submitted representation along with disability certificate on dated 10.03.2021, but no decision was taken by CGM MH office till dated 08.04.2021 and did not heed to pay attention about genuine medical case of his mother for giving exemption from transfer. The circumstances and situation created by CGMH MH office had blocked his salary, alone source of livelihood for him and his mentally challenged, bed ridden locomotor disabled mother. The complainant has applied for nearby station posting with first option was Amravati. Surprisingly CGMH MH office accepted his request for nearby posting i.e. Akola, by ignoring first option at Amravati which was submitted under frustration but not given him justice. Lastly he joined at Akola on dated 25.05.2021 to regularise his salary for medical treatment of his mother.



The complainant further submitted that his mother 72 years is residing with him is 70% locomotor disability and a person with specified disability. She is suffering from stroke @ right hemiparesis with Aphasia due to which she is locomotors disabled, right side of body is completely paralysed and lost her functionality she cannot move herself from one place to another and she completely lost her ability to speak, understand written & verbal language. Due to these benchmark disabilities, she is bedridden and is totally dependent to perform daily routine activities and needs high support for food, medicine and her daily care. There is nobody without him at home who can take care of her systematic rehabilitation as well as to ensure that she enjoy the right to equality, quality life with dignity and respect for her won integrity equality with other. The complainant has requested once again to consider his request and posted to Amravati on deputation without TA/DA as a main care giver.

4. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 26.04.2022. The following were present:

- i) Shri Y.R. Gudhe: **Complainant**
- ii) Shri B.S. Lawante, DGM (HR): **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 was transferred to Akola, despite his request for retention in Amravati. Ground for his request of retention is that he serves as care giver of divyang ailing mother. He further submits that there are several other employees who were either transferred to place of their choice or were retained on the same ground of 'care giver'.

30. Respondent submitted that the Complainant was initially transferred to Satara from Amravati by Order dated 24.08.2020. Complainant submitted application dated 29.08.2020 for retention at Amravati. His request was rejected because he failed to submit disability certificate of his mother. Thereafter, the Complainant submitted representation dated 16.10.2020 for cancellation of transfer Order to Satara which was empathetically considered and he was retained at Amravati upto 31.03.2021 as care giver. On his own request dated 08.04.2021, he was transferred to Akola by Order dated 22.05.2021.

31. During online hearing, the Complainant informed this Court that distance between Akola and Amravati is nearly 100 K.Ms. He is the only one to take care of the divyang mother. He further submitted that he was posted in Amravati since last 10 years. He further submitted that the medical facilities available for divyang mother in Amravati are not available in Akola.

32. Respondent also informed during online hearing that the vacancies may become available in next month and the Complainant may be transferred to Amravati.

33. The Case of the Complainant squarely falls under the guidelines laid down under O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T. The O.M. provides for exemption from transfer of the government employee who serves as main care giver of the dependant. Objective behind this guideline is two-fold. When an employee who is main care giver of divyang dependant is exempted from transfer, the divyang dependant gets better medical care and attention, and the employee gets an opportunity to perform his job efficiently.

34. This Court recommends that the Respondent shall exempt the Complainant from transfer and transfer the Complainant back to Amravati.

35. Respondent shall also file the implementation report of this Recommendation Order within 3 months of the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.

36. This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



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: 13057/1023/2022

Complainant: Shri Sachin
Email: <sachinadhana8@gmail.com>
Mb: 09911940514

132676

Respondent: The Secretary (posts)
Department of Posts, Dak Bhawan
Sansad Marg, New Delhi - 110001
Email: <secretary-posts@indiapost.gov.in>

132677

Complainant: 90% visual impairment

GIST of the Complaint:

Complainant Shri Sachin, Postal Assistant vide complaint dated 02.01.2022 submitted that he has been continuously harassed Shri Krishna Kumar, APM Treasury. He has requested to resolve his problem as soon as possible.

2. The matter was taken up with the Respondent vide letter dated 04.02.2022 under Section 75 of the RPwD Act, 2016 but despite reminder dated 17.03.2022, no response has been received from the respondent. Therefore, hearing scheduled on 28.04.2022.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 28.04.2022. The following were present:

- Shri Sachin – Complainant
- Col. Arvind Verma, DDG & Shri M.N.Yadav, Dy. Post Master on behalf of respondent

Observation/Recommendations:

3. Complaint filed against another employee namely, Krishna Kumar, APM Treasury who is continuously harassing him. Complainant submits that Krishna Kumar forces him to do unauthorised work and threatens him that he will file false complaints against the Complainant.

....2....

4. Reply was not filed by the Respondent.
5. During online hearing Complainant apprised this Court that his issue has now been resolved.
6. Although, the matter has now been resolved, this Court takes serious note of the fact that Reply was not filed by the Respondent. This Court is inclined to mention Section 77 of Rights of Persons with Disabilities Act, 2016 which is mentioned below -

SECTION 77 - Powers of Chief Commissioner -

(1) The Chief Commissioner shall, for the purpose of discharging his functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any documents;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Chief Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

7. As mentioned above, this Court has powers of civil code in respect of requiring and discovery of documents. Further, Code of Civil Procedure prescribes for fine and imprisonment in cases of failure in producing necessary documents.
8. The Respondent is recommended to file all the requisite documents whenever the same are asked for in future cases in order to avoid penal action against the responsible officers.



....3....

....3....

9. As far as present Complaint is concerned, since the issue has now been resolved, ~~hence~~ intervention of this Court is not warranted.

10. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



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: 13034/1023/2021

Complainant: Ms. Kajal Roy
H.No. P – 20, Iswar Mitra Road
Mitra Colony, Behala, Kolkata – 700034
E-mail: <mitrasajal1960@gmail.com>

132678

Respondent: The Director General
Central Government Health Scheme
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi – 110011

132679

Complainant: Shri Sayan Roy a person with 40% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **06.12.2021** submitted that her husband Shri Pradip Kumar Roy was working in National Sample Survey Organization and he expired on December 2020. She further submitted her dependent son name is already included in PPO for purpose of family pension in the event of the death of the pensioner as per rule. She further submitted that her husband was not aware that his dependent son can avail the CGHS facility after attaining the age of 25 too, therefore, she has requested to provide CGHS facility to her dependent son.

2. The matter was taken up with the Respondent vide letter dated **20.12.2021** under Section 75 of the RPwD Act, 2016.

3. Addl. Dy. Director General (HQ), M/o Health & Family Welfare, Directorate General of Central Govt. Health Scheme vide letter dated **17.01.2022** submitted that her son's name will be included in the CGHS card for which she has been requested to provide undertaking regarding status of her son as unmarried and financially dependent on her to the O/o the Additional Director, CGHS, Kolkata.

....2.....

4. The above reply was forwarded to the complainant for 23.02.2022 for submission of her comments/rejoinder but till date no response has been received.

5. After considering the respondent's reply dated **17.01.2022** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **28.04.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **28.04.2022**. The following were present:

- Ms. Kajal Roy - complainant
- Dr. T.K. Mandal, Operating Head Officer on behalf of respondent

Observation/Recommendations:

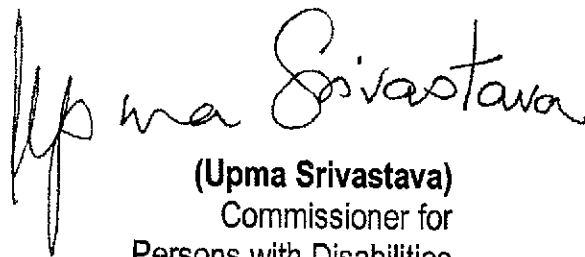
6. Complainant submits that her husband, Sri Pradip Kumar Roy was employee of National Sample Survey Organisation. He superannuated w.e.f. 31.12.2014. Later on 03.12.2020 he died. Complainant submits that her son, who is divyangjan and aged 36 years is eligible for CGHS facility. She applied for issuance of CGHS Card for availing medical facility. Respondent denied to issue the same in his favour.

7. Respondent submits that they are ready to include Complainant's son's name in the CGHS Card subject to the condition that the Complainant submits an undertaking that her son is unmarried and financially dependant upon the Complainant.

8. During online hearing both the parties apprised this Court that the Complainant has submitted the relevant documents and the issue was resolved on 04.02.2022 itself.

9. Since the matter has already been resolved hence intervention of this Court is not warranted.

10. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



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: 13048/1023/2021

132690

Complainant: Shri Pratik Hanmant Nikam
B/172, Shilp Residency, Near Gurunanak Public School
Soma-Talav Tarsali Ring Road, Tarsali
Vadodara, Gujarat – 390009
E-mail: <nikamph@gmail.com>

Respondent: The Executive Director
M/s Rashtriya Chemicals & Fertilizers Ltd
Priyadarshini Building, Eastern Express Highway
Sion, Mumbai, Maharashtra – 400022
E-mail: <sunita_shukla@rcfltd.com>

132691

Complainant: 60% visual impairment

GIST of the Complaint:

Complainant Shri Pratik Hanmant Nikam vide complaint dated **14.12.2021** has requested that: (i) recovery enforced on him by the respondent vide letter dated 01.10.2019 for an amount of Rs. 3,68,220.00 as incorrect (ii) extension of time granted to him to obtain the SAP certification by competent authority vide approval dated 04.10.2018 as valid and it should be regularized as a part of agreement/training bond signed with the respondent (iii) he has completed 03 years of service in public sector from the date of obtaining SAP certification which is in line with the referred DPE guidelines, therefore, to direct the respondent to refund an amount of Rs. 3,68,220.00 which includes SAP exam application fees alongwith simple interest @10% per annum.

- The matter was taken up with the Respondent vide letter dated **04.01.2022** under Section 75 of the RPwD Act, 2016.
- Dy. General Manager (HR), Rashtriya Chemicals & Fertilizers Ltd vide letter dated **01.02.2022** inter-alia submitted the following points:

....2....

- Shri Pratik Nikam was appointed as Management Trainee on 10.11.2011 and on successful completion of training he was regularized as Engineer on 10.11.2012.
 - In the year 2016, he was nominated for the said SAP training and certification Program for Plant Maintenance Module and he entered into agreement with respondent Company on 31.03.2016.
 - Complainant failed to clear examination within 12 months from the date of examination and he was given opportunity to clear exam till 31.12.2018. The complainant had completed SAP certification on 13.12.2018.
 - Complainant had completed the training on 31.12.2018, accordingly he was supposed to serve the Respondent Company for 03 years from 31.12.2018 to 31.12.2021. However, he tendered his resignation on 31.08.2019 i.e. before completion of 03 years. Therefore, Respondent Company was entitled to recover the entire expenditure incurred by the Respondent Company from him towards SAP training.
 - Accordingly he had electronically transferred Rs. 3,68,220/- to the respondent Company.
 - Now, complainant has prayed for refund of amount of Rs. 3,68, 220/- alongwith 10% simple interest from 03.10.2019 i.e. date of recovery and there is no provision in the agreement to consider his request.
4. Complainant vide rejoinder dated 11.02.2022 reiterated his grievance and requested to conduct hearing in the matter.
5. After considering the respondent's reply dated **01.02.2022** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **26.04.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **26.04.2022**. The following were present:

- Shri Pratik Hanmant Nikam - complainant
- Shri Vishwas Chaudhary, DGM (HR) on behalf of respondent




....3....

....3....

Observation/Recommendations:

6. Complainant submits that he was appointed in the Respondent establishment on 10.11.2011. In 2016, the Complainant was chosen for training called as SAP Training and he entered into agreement and was supposed to comply with condition that the Complainant has to serve the Respondent establishment for 3 years after completion of training, failing which he will have to pay the cost of SAP Training, which amounts to approximately 3,68,000/-. Before the completion of 3 years the Complainant got selected in GAIL INDIA LTD. Complainant's contention is that upon selection in GAIL he was forced to submit bond amount of Rs. 3,68,000. Whereas, as per DPE OM dated 29.07.2004, he was not liable to submit this amount. Because as per the OM if an employee obtains training at the cost of a PSU and later leaves it before completion of agreed tenure to join another CPSU then he can complete his remaining service in new CPSU.
7. Respondent has accepted all the contentions except one that the DPE O.M. dated 29.07.2004 is not applicable in this case because the O.M. is applicable only when both the old and new CPSUs agree to enforce the conditions of the said O.M. In the present case, there was no such agreement between the Respondent and GAIL hence, O.M. was not applicable.
8. During online hearing, the Respondent apprised this Court that the Complainant was not the only one who signed the document. Even the non-divyang employees who went for the same training course signed the same agreement with the same terms & conditions.
9. After perusal of submissions made by the Complainant and the Respondent this court concludes that there is no discrimination on the ground of disability. It is pertinent for Complainant to disclose the discrimination on the grounds of disability. Hon'ble Supreme Court laid down the importance of such disclosure in *STATE BANK OF PATIALA v. VINESH KUMAR BHASIN* (2010) 4 SCC 368 whereby it was held in Para 29 as under:
- "29. The grievances and complaints of persons with disabilities have to be considered by courts and authorities with compassion, understanding and expedition. They seek a life with dignity. The Disabilities Act seeks to provide



....4....

...4....

them a level playing field, by certain affirmative actions so that they can have adequate opportunities in matters of education and employment. The Act also seeks to ensure non-discrimination of persons with disabilities, by reason of their disabilities. But the provisions of the Disabilities Act cannot be pressed into service to seek any relief or advantage where the complaint or grievance relates to an alleged discrimination, which has nothing to do with the disability of the person. Nor do all grievances of persons with disabilities relate to discrimination based on disability.

10. Hon'ble Court further illustrated the point in following words:

"Illustration:

Let us assume a case where the age of retirement in an organisation is 58 years for all Class II officers and 60 years for all Class I officers. When a Class II officer, who happens to be a person with disability, raises a dispute that such disparity amounts to discrimination, it has nothing to do with disabilities. Persons with disability as also persons without disability may contend in a court of law that such a provision is discriminatory. But, such a provision, even if it is discriminatory, has nothing to do with the person's disability and there is no question of a person with disability invoking the provisions of the Disabilities Act, to claim relief regarding such discrimination."

11. Since the complainant's issue is not related with the disability, intervention of this Court in the present Complaint is not warranted.

12. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022



88

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: 13021/1021/2021

Complainant: Shri Narender Singh Patwal

E-mail: <narenderpatwal77@gmail.com>

Respondent: The Director

All India Institute of Medical Science

Ansari Road, New Delhi – 110029

E-mail: <director@aiims.edu>

Complainant: 75% locomotor disability

GIST of the Complaint:

Complainant Shri Narender Singh Patwal, Jr. Administrative Officer inter-alia submitted that he is being harassed by Shri Bharat Bhushan Garg, Accounts Officer and he is intentionally giving 5.3 grading in ACR. He further submitted that new computer system has been provided to his juniors except him and due to old computer system he is facing lot of problems. He has requested to direct the respondent to stop unnecessary harassment and provide promotion to Jr. Administrative Officer w.e.f. 26.08.2019 instead of 11.09.2020 and also seniority from August date as 65 Sr. Administrative Asstt. Superseded him.

2. The matter was taken up with the Respondent vide letter dated 09.12.2021 under Section 75 of the RPwD Act, 2016.

3. Administrative Officer, AIIMS vide letter dated 25.01.2022 inter-alia submitted that Departmental Promotion Committee noted that Shri Narender Singh was graded as 'Average' during the year 2006 – 2007, hence on the basis of grading accorded in the ACRs, the Committee do not recommend the name of Shri Narender Singh for promotion to the post of Junior Administrative Officer 100% by promotion in the Level -6 of pay matrix. His candidature was again placed before the DPC in its meetings held on 19.02.2020, however, he was not recommended for promotion. His candidature was again considered by the DPC in its meeting held on 24.08.2020 and he was recommended for promotion to the post Jr. Administrative Officer in the Level -- 6 of Pay Matrix from the date of assuming the charge to the post of Jr. Administrative officer. They further submitted that others matters raised by the complainant does not pertain to Recruitment Cell.

....2....

4. Complainant vide rejoinder dated **16.02.2022** reiterated his grievance.

5. After considering the respondent's reply dated **25.01.2022** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **26.04.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **26.04.2022**. The following were present:

- Shri Narendra Singh Patwal – complainant
- None on behalf of respondent

Observation/Recommendations:

6. Complainant submits that his promotion to the post of Junior Administrative Officer was due in August 2019 however he was promoted to the post w.e.f. September 2020. Hence, discriminating with divyang employee.

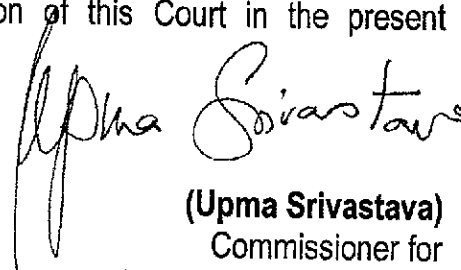
7. Respondent in its submits that in 2019 his name was considered by DPC. For promotion to the post of Junior Administrative Officer, ACRs are considered. In case of the Complainant, ACRs for the period of 2011-12, 2014-15 and 2015-16 were reported as NRC (No Report Certificate), hence, ACR of year 2006 -07 was considered which was 'Average'. Hence he was denied promotion in 2019. Subsequently he was promoted in 2020.

8. The relevant guideline applicable in the present Case is DoPT O.M. No. 22011/5/86 - Estt dated 10.04.1989. As per Para 6.2.1. (c) of the relevant OM, when one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question.

9. From the perusal of the facts submitted by both the parties, this Court concludes that the denial of promotion in 2019 was done in accordance with this O.M. of DoPT. Complainant has not submitted any proof to establish that this OM is not applicable in his case.

10. This Court concludes that no case of discrimination on the ground of disability is made out in the present Complaint, hence intervention of this Court in the present Complaint is not warranted.

11. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 13.05.2022