

The complainant has requested to CCPD to pass suitable necessary directives to the Airports Authority of India to nullify the posting order and amend the existing transfer policy so that care-giver of disabled dependent may also get considered for transfer exemption as presently only the care-givers of disabled child are given exemptions from rotational transfers.

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

3. In response, General Manager (HR), Airport Authority of India, vide email dated 11.10.2021 inter-alia submitted that the complainant has been working at Delhi since 2015 and she was due for tenure transfer. Accordingly, she was under orders of transfer to Srinagar. The respondent further submitted that her transfer to Srinagar has been deferred till next transfer season, on compassionate grounds.

The respondent further submitted that her request for amendment in the policy w.r.t. exemption from transfer for care-giver of disabled dependent, it is informed that the matter was placed before Personnel Advisory Board and after deliberation, it was decided to continue the existing provision of grant transfer exemption to an employee who is a care-giver of the disabled child only.

4. In response, the complainant filed her rejoinder by email dated 22.10.2021 and submitted that her transfer to Srinagar, J&K has been deferred by a year i.e. till next year on compassionate grounds. As per the procedure in vogue, the transfer application form for next year is to be submitted in the month of December 2021. The complainant has not agreed on comments submitted by the respondent and requested to CCPD Court to pass an appropriate directive to AAI to recognize a caregiver as defined in the RPwD Act 2016.


5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.01.2022. The following were present:

- i) Ms. Sanjhana Naithani – Complainant
- ii) Shri N. Natrajan, G. M. (HR); Shri Kuldeep Singh, G.M. (CNS); and
Shri Kapil Rastogi, GM. (HR) – Respondent

Observation / Recommendations:

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

2. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to 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) Present Complainant is filed by the aggrieved employee of the Respondent establishment who is care taker of dependant intellectually divyang brother. She was posted at New Delhi and has now been transferred to Srinagar, J&K. Complainant seeks relief for retention at New Delhi.

30) Respondent submits that transfer policy of the Respondent establishment exempts care giver of divyang child but does not allow exemption of care taker of brother, sister, spouse etc. Further, Respondent submits that the issue of inconsistency between Respondent's transfer policy and DoPT guidelines has been placed before Personal Advisory Board and outcome of the same shall be informed to this Court.

31) Respondent rightly submits that there is clear inconsistency between its own transfer policy and DoPT guidelines. Rights of Persons with Disabilities Act, 2016 is a social welfare legislation. Purpose of enacting this Act is to ensure that divyangjan can enjoy equal rights with others. This statute also gives some protections to divyangjan. In landmark judgment titled as Lalappa Lingappa & Ors v. Laxmi Vishnu Textiles; Civil Appeal No. 436 of 1980, hon'ble Supreme Court held that socio welfare statutes must be given wide and liberal interpretation. Further, it was held by the apex Court that if more than two interpretations of any provisions are possible then that interpretation which is more beneficial to the person in whose interest the statute has been enacted shall be preferred.

32) In the present case, DoPT guidelines and Respondent's transfer policy, both are enacted under Rights of Persons with Disabilities Act, 2016. However, DoPT guidelines laid down in O.M. No. 42011/3/2014, dated 08.10.2018 are more beneficial for divyangjan for whom RPwD Act, 2016 is enacted.

33) This Court recommends that the Complainant shall be retained in New Delhi and shall not be transferred out of New Delhi. This Court further recommends that the Respondent shall amend its transfer policy and shall bring it in consonance with DoPT guidelines.

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

This case is disposed off


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 05.04.2022



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12844/1022/2021

Complainant : Shri Satpal Singh
E-mail: satpal@mahfin.com

— R31992

Respondent : The General Manager
Mahindra & Mahindra Financial Services
4th Floor, Mahindra Towers,
Dr. G.M. Bhosale Marg,
P.K. Kume Chowk Worli,
Mumbai-400018
E-mail: singla.riya@mahindra.com, mahipal@mahfin.com
fatmi.ashish@mahindra.com, walia.saurabh@mahindra.com
share.mmfsi@mahindra.com

— R31993

GIST OF COMPLAINT:

The complainant Satpal Singh is working in the Mahindra & Mahindra Financial Service Ltd. He stated that his son Aganveer Singh is suffering from more than 90% disability and he is physically and mentally challenged child. He is totally dependent to him and he is the main care taker of him in his family. But his company Mahindra & Mahindra Financial Services Ltd. transferred him from Haryana to Rajasthan and order has been issued to him.

The complainant submitted that he is not able to shift there because his child is a student of Govt. school and getting benefits from there. His whole family is well settled here and his child is living in healthy atmosphere and feeling safe.

The complainant has informed his company authorities regarding his genuine problem but they are not responding him. Their attitude is not acceptable and he is feeling depressed and harassment from last past days because he has responsibility of 2 more children to look after them. The complainant has requested to CCPD Court to retain his transfer order as soon as possible so that he can give proper care to his family especially his son.

2. The matter was taken up with the Respondent vide letter dated 06.09.2021 under Section 75 of the RPwD Act, 2016. But despite reminder letter dated 29.09.2021 and 20.10.2021, the respondent did not filed their comments.

3. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.01.2022. The following were present:

- Shri Satpal Singh – Complainant
- Ms. Kanika Baweja, Advocate – Respondent

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Observation / Recommendations:

During online hearing both parties appeared and informed this Court that the issue has now been settled. The Complainant has been posted to the location of his choice. For this reason, intervention of this Court is not warranted.

This case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 05.04.2022



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12911/1022/2021

Complainant : Shri Arjun
Assistant Manager
Sarva Haryana Gramin Bank
Bhora Kalan Branch
Gurgaon Region
Email : arjungaur592@gmail.com
Mobile No : 07827596565

R31996

Respondent : The General Manager (HRD)
Sarva Haryana Gramin Bank
Head Office, Plot No. 1, Sector-3
Rohtak-124001 Haryana
Email : cms@shgbank.co.in
Contact No : 01262-243111, 01262-262206
Fax: 01262-243113

R31997

GIST OF COMPLAINT:

The complainant Shri Arjun, Assistant Manager, is an employee of the Sarva Haryana Bank, Bhora Kalan Branch, Gurgaon Region, having 40% Visually Impaired Disability. The complainant stated that he was transferred to Bhora Kalan in October 2019 from his original/appointment branch sector 44 Gurgaon; this was not a routine transfer.

The complainant further submitted that he gave transfer request two times in written by proper channel recommended by his branch manager and forwarded to regional office for recommendations of regional manager. The complainants personally meet General Manager in October 2020 but the treatment of then GM HRD was heart breaking he told him go and do your work he has lot of work to do so don't waste his time.

The complainant further submitted that he met HRD officials but they deny by saying there is a transfer policy of 2 years. The complainant told him that he is a visually impaired he need to get transferred to near his residence. In March 2021 he gave a transfer request again through proper channel before the routine transfer due in May 2021 but again he did not get transferred. He recently again requested HRD Chief Manager to transfer him near to his residence but they are not giving proper response and saying will see in future. The complainant further submitted that on 31 July 2021, 9 transfer were done in adjustment basis but he was not got transferred. The complainant humbly requested to CCPD office to consider his transfer request and transfer him near his residence.

2. The matter was taken up with the Respondent vide letter dated 29.10.2021 under Section 75 of the RPwD Act, 2016.

3. In response, General Manager, Sarva Haryana Bank, Rohtak, vide email dated, 06.11.2021 inter-alia submitted that it is incorrect that handicapped staff is side-lined as alleged

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)

wrongly and allegations levelled by the complainant against the GM are false, concocted, baseless and without any basis and the same is denied as incorrect. It is also incorrect that the complainant was not given any response by the bank regarding his transfer, rather it is submitted that the complainant was duly apprised and informed that he has been transferred from branch office Gurgaon, Sector-44 to Branch Office Bhora Kalan on administrative ground because Gurgaon, Sector-44 Branch was suffering losses and the Regional Manager, Gurgaon recommended to post the complainant at Bhora Kalan Branch, which is next nearest branch where vacancy was available.

The respondent further submitted that the Bank duly follows the Banks circular of transfer policy and interest of physically handicapped /visually impaired employees are always looked into while posting and transferring the physically handicapped / visually impaired employees of the bank and the bank always gives top priority by giving them the nearest place of posting or transfer at their hometown where ever possible keeping in view the exigencies of the bank. The respondent further stated that the complainant will be duly adjusted to the branch more nearer to his residence as and when the vacancy will be available.

4. In response, the complainant filed his rejoinder by email dated 10.11.2021 and submitted that the content submitted by the respondent (General Manager) are false, frivolous and far from reality while bank authority are frequently violating the transfer policy of the bank to give undue benefit to their favourite staff for that the reasons best known to them. There are various instances where in some organisation/unions have made various complaints of discrimination and prejudice transfer done by them. The complainant submitted that recently bank has carried out 50 transfers where transfer policy of the bank has been set aside.

The complainant submitted that respondent not contacted him by any communication either oral, written or telephonically so he also well aware about his disability which is also on record of bank his appointment was done by bank after completion of all formalities related to his disability so the respondent makes false statement to safeguards himself in front of honourable court.


The respondent makes false allegations against him he never called him to listen his grievances and not called at HO to take the decision of his transfer as per Govt. of India guidelines and he submitted two transfer request in written recommended by BM and forward to RO for recommendation of RM Gurgaon.

The complainant also submitted that the respondent misleading the honourable court about his present branch which is next nearest to his sector 44 branch. Sector 44 branch to Bhora Kalan there are no of branches which are nearest to his residence.

The complainant is not satisfied with the reply of respondent that the bank duly follows the bank circulars of transfer policy and interest of physically handicapped / visually impaired employees were always looked into while postings and transfer and give them top priority by viewing them the nearest place of posting or transfer at their hometown.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 4.01.2022. The following were present:

- i) Shri Arjun – Complainant
- ii) Shri Mithlesh Kumar Jha, General Manager, Sarva Haryana Bank – Respondent



Observation / Recommendations:

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

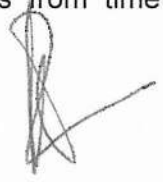
2. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities.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

(105)

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 -:

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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. In the present case, the Complainant who was posted in Gurugram was transferred to Bhora Kalan. Complainant submits that the distance between Bhora Kalan and his hometown is 40 K.Ms. approximately. Because of the nature of his disability he faces undue hardships in commutation to and from his office.

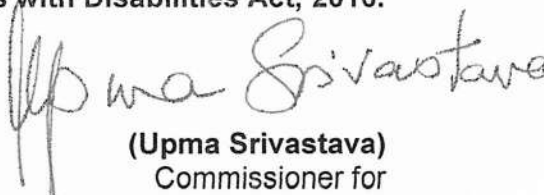
30. During online hearing, Respondent submitted that the Complainant was transferred because the branch where he was originally posted went into loss and hence, he was transferred to profit making branch. Further, it was submitted that no vacancies were available in other branches situated near to his home.

31. Various O.Ms. delineated above are applicable in the present case as well. In the present Complaint, the Complainant is visually impaired. His transfer to 40 K.Ms. away from his home will definitely present more challenges for him in reaching the office. Hence, transfer to any branch which is within reasonable distance of the Complainant's home will make the workplace more accessible for Divyangjan employee.

32. This Court recommends that the Complainant shall be transferred back to Gurgaon and further recommends that the Respondent shall frame separate transfer and posting policies for divyang employees.

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

This case is disposed off


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 05.04.2022



extra (110)

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.12852/1092/2021

Complainant:

Shri Sahdeo Sridhar Singh
R/o B-9/462, Raj Abhishek City Homes Sachin,
District – Surat, Gujarat-394230
Email: sahdeosingh15@gmail.com
Mobile: 9574720299

—R31972

Respondent:

(1) Royal Sundaram General Insurance Co. Ltd.
Vishranti Melaram Towers,
No 2/319, Rajiv Gandhi Salai (OMR) Karapakkam, Chennai-600097
Email: md@royalsundaram.in
Email: customer.services@royalsundaram.in

—R31973

(2) Chairman,
Insurance Regulatory and Development Authority of India,
Delhi Office – Gate No. 3,
Jeevan Tara Building, First Floor
Sansad Marg, New Delhi-110001,
Ph: (011) - 2344 4400; Fax: 011-23747650;
Email: irdandro@irdai.gov.in

—R31974

1. Gist of Complaint:

1.1 Shri Sahdeo Sridhar Singh, M63, a person with 40% Locomotor Disability, filed a complaint 09.08.2021 regarding not paying accident claim by M/s Royal Sundaram General Insurance Co. Ltd.

1.2 The complainant submitted that on 3rd October, 2020, at 09.05 PM, he was going to his office with his Activa Scooter No.GJ 05 NG 6828. Unfortunately, he met with an accident and got 40% Locomotor disability. Since then, he is unemployed/jobless and living in his rental flat.

1.3 He had taken an accidental policy No.PY 00112078000100 for ₹5.00 Lakh from Royal Sundaram General Insurance Co. Ltd. After the said accident, he had filed accident claim, but the Insurance Company rejected his claim and did not pay a single penny.

(Page 1 of 3)

5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं० जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892364, 20892275
5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275

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

(पया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

2. Submissions made by the Respondent

2.1 M/s Royal Sundaram General Insurance Co. Ltd. [Respondent No.1] in their reply dated 28.10.2021 submitted that on filing the claim on 30.11.2020 by the complainant, the claim was registered under claim No.PY00000036 and sought for documents from the complainant/insured in order to look into the medical records for processing the claim. Insured submitted incomplete documents such as disability certificate, muscle test report. Neither the documents confirm about the hospitalization nor the treatment taken by him post alleged accident. The medical report submitted by him clearly reveals that all parameters under which medical test was conducted was found to be normal. The insured never submitted the original treatment records immediately post accident which has resulted into alleged disability for which he had lodged a claim.

2.2 Respondent No.1, being a custodian of public funds received by them as premium, they have obligation to verify the nature of injuries and treatment records, so that they could satisfy that the claim falls under the agreed terms of contract. Since no treatment records of accidental injuries were submitted by the insured, his claims were not substantiated hence he was informed that his claim is not tenable under the policy of insurance.


2.3 Respondent No.1 further submitted that the policy of insurance is a benefit policy and terms and conditions including the benefits are well defined under the terms of insurance. Hence both parties are obligated to look into the terms in the event of a claim. The policy covers the risk of Permanent Total Disablement and Permanent Partial Disablement and in addition it further defined very lucidly the types of injuries/disablement which would fall within the purview of Permanent Total Disablement and Permanent Partial Disablement. In the given instances, alleged disability does not fall into any of the pre-defined risks covered under the policy, hence claim was not considered for payment and same was duly communicated to him vide their email dated 16.03.2021.

2.4 The complainant/insured, despite had opted to raise grievances through various channels, was responded to submit supporting documents to have a relook into their decision, but till date, the insured has not chosen/opted to submit the medical treatment underwent immediately after the alleged accidental fall. Hence, Respondent No.1 had to close the complaint since the same is devoid of any merits.

4. No comment has been received from the Respondent No.2 - Insurance Regulatory and Development Authority of India.

3. Submissions made in Rejoinder

The complainant in his rejoinder dated 03.11.2021 has submitted that he cannot accept the fault of respondent.



4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **06.01.2022**. The following were present:

- (1) Shri Sahdeo Sridhar Singh, complainant in person
- (2) Ms. Sangeeta Verma, Head (Accident & Health Claims) for Respondent

5. **Observation/Recommendations:**

5.1 Both the parties were heard.

5.2 Complainant submitted that on 03.10.2020 he met an accident while commuting to the office. Before the date of accident, the Complainant purchased accident insurance policy of Rs. 5 Lakh from the Respondent. After accident, the Complainant claimed accident insurance from Respondent No. 1 but the Respondent refused to extend benefits of insurance policy he purchased.

5.3 Respondent No. 1 filed its Reply and submitted that the Complaint never submitted documents to prove that he underwent medical treatment soon after meeting an accident. Complainant failed to submit documents in original. Some documents which were submitted by him confirmed neither his hospitalization nor the treatment undertaken by him.

5.4 Further during online hearing, Respondent submitted that as per terms & conditions of the insurance policy the Complainant purchased, only condition which is covered is 100% loss of limb, whereas Complainant's injury after alleged accident is 40% loss of limbs.

5.5 During online hearing Complainant admitted that he never went to the hospital for his treatment. He took treatment from a local doctor and hence there are no documents to present before the Insurance company.

5.6 This Court concludes that there is no violation of disability rights. Intervention of this Court in the present Complaint is not warranted.

5.7 Accordingly the case is disposed off.

Dated: 05.04.2022


(Upma Srivastava)
Commissioner
for Persons with Disabilities



Extra (113)

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. 12942/1033/2021

Complainant:

Mr. Prashant Jhakarwar,

Address: C3-201, Lunkad Queensland Society,

Mhada Colony, Viman Nagar, Pune (MH)-411014;

Email: pm17prashantj@iimidr.ac.in; Mobile: 7037076200

-R31975

Respondent:

The Chairman & Managing Director,

National Handicapped Finance Development Corporation,

Unit No. 11 & 12, Ground Floor, DLF Prime Tower,

Okhla Phase - I, Near Tehkhand Village, New Delhi - 110020;

Ph:(011)45803730; Email: nhfdc97@gmail.com

-R31976

1. Gist of Complaint:

Shri Prashant Jhakarwar, a person with 50% Locomotor Disability filed a complaint dated 07.10.2021 regarding denial of renewal of Scholarship under Trust Fund (No.TF/17/02034) for the year 2018-19 by NHFDC despite submitting all the requisite documents through the Indian Institute Of Management (IIM), Indore in March 2019.

2. Submissions made by the Respondent:

2.1 In the reply dated 17.11.2021, the respondent submitted that the complainant had applied Online for renewal of the scholarship for the academic session 2018-19. The hardcopy of his application for renewal was not attested/verified with the seal of the Dean/Registrar of the Institute/College, so the applicant/complainant had been informed accordingly vide telecommunication and emails dated 03.06.2020 and 10.11.2021.

2.2 NHFDC shall place the application of the applicant/complainant after receipt of duly corrected discrepancies in its renewal application before the Scholarship Screening Committee (SSC).

3. Submissions made in Rejoinder

3.1 The complainant filed his rejoinder dated 21.12.2021 and informed that he had submitted the prerequisite documents to the Institute. The receipt confirmation has been given by the Respondent but complainant is still not satisfied as he was told by the Respondent that once the scholarship meeting will be held after that his application will be considered.

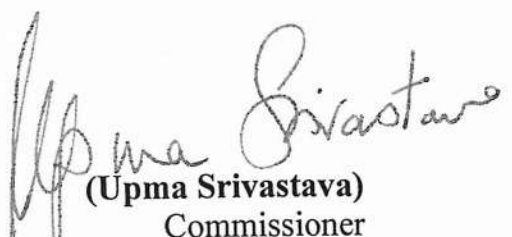
4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 22.02.2022. The following were present:

- (1) Mr. Prashant Jhakarwar – Complainant himself
- (2) National Handicapped Finance Development Corporation – Shri Manoj Kr. Sahoo, Chief Manager (S&P)

5. **Observation/Recommendations:**

1. Complainant submits that he applied for Respondent's scheme - National Handicapped Finance and Development Corporation (NHFDC) for Renewal of Scholarship Scheme -II''. His application was rejected for reason that the documents submitted were incorrect.
2. Respondent submits that the Complainant submitted an application for obtaining the benefit of the scheme. Hard copy of the application was received on 05.02.2019. The application was not attested/verified with the seal of Dean/Registrar of the institute/College. Application was informed about the fact by email dated 03.06.2020. Respondent is ready to renew the scholarship subject to submission of renewed application attested/verified properly.
3. During online hearing, Complainant submitted that he resubmitted the application along with the requisite documents. Respondent also confirmed the same and submitted that the renewed application has been received. Next meeting of the Respondent establishment has been fixed and Complainant's application is made part of the agenda of the meeting.
4. Since the issue has been resolved hence intervention of this Court is not warranted.
5. This case is disposed off.

Date 05.04.2022


(Upma Srivastava)
Commissioner
For Persons with Disabilities



Ex 189 (115)

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.12892/1033/2021

Complainant:

Shri Zaheer Jan, Founder Chairman (STDF)
Child & Disability Rights Activist
R/o Bemina Hamdaniya Colony, Srinagar-190018
Email: infostdfjk2013@gmail.com
Mobile: [9858433611](tel:9858433611), [9419077480](tel:9419077480)

—R31977

Affected Person:

Mr Irshad Ahmad Thoker,
a person with 50% Locomotor Disability,
PhD Research Scholar (Geography), Session: Dec. 2018,
University of Kashmir, Srinagar
Phone No. [9622942571](tel:9622942571) / [7780961339](tel:7780961339)
Address : Logripora Aishmuqam
District : Anantnag Tehsil Pahalgam: 192129
Email : thokerirshad391@gmail.com

—R31978

Respondent:

The Registrar,
University of Kashmir,
Main Administrative Building,
Hazratbal, Srinagar-190006 (J&K)
Email: registrar@kashmiruniversity.ac.in

—R31879

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 12.09.2021 regarding intervention of this Court for providing hostel accommodation to Shri Irshad Ahmad Thoker, a person with 50% Locomotor Disability and a Ph.D Research Scholar (Geography), Session: Dec., 2018, University of Kashmir, Srinagar.

(Page 1 of 7)

1.2 It was submitted that after spending 02 years outside from the University Campus, he Shri Irshad was provided hostel accommodation from 01.01.2021. Thereafter, after spending 03 months the Hostel Warden and the Provost issued him a notice for vacating/leaving room without any reason. The complainant alleged that he was tortured by the Warden and the Provost by not allowing him enter in the hostel room. He was facing hardships as his career was being spoiled. He prayed to be allowed enter into hostel as soon as possible till he completes his Ph.D.

2. Submissions made by the Respondent

2.1 Respondent filed their reply dated 25.11.2021 and submitted that the complainant/applicant applied for hostel accommodation on 26.12.2020 seeking temporary accommodation in IKS Guest House for a period of two months with effect from 01.01.2021 to 28.02.2021. After expiry of two months, he moved one more application seeking extension, resultantly, one month's extension was granted to him till 31.03.2021. Thereafter, he remained in the hostel as an unauthorized occupant for almost 06 months till 07.09.2021 and refused to vacate and surrender the hostel room despite repeated communication. To maintain the allotment policy, the University sealed the hostel room. However, taking a liberal view he was given accommodation in S.A. Boys Hostel in Block B. Despite providing alternate accommodation in S.A. Boys Hostel, the complainant/applicant failed to turn-up and to receive the possession.

2.2 The respondent denied that any officer of the university tortured or harassed the complainant/applicant, but under the grab of disability, he wants to grab the accommodation for an indefinite period which is in utter violation of the hostel policy. In case he is allowed to unauthorisedly occupy the earlier accommodation, it will open a flood gate for undeserved people on the strength of parity.

3. Submissions made in Rejoinder

3.1 The complainant submitted the rejoinder vide email dated 17.12.2021 and requested this Court for directing the Respondent to file an Affidavit to the effect that the alternative accommodation as being provided by the Respondent to the Complainant at S.A. Boys Hostel, Block B is physically accessible by the Complainant.

4. **Hearing:** An hearing through video conferencing by the Commissioner for the Persons with Disabilities was held on 01.02.2022

5. The following persons were present during the hearing:

(1) Complainant: Sri Naved Bakhtiyar

(2) Respondent: Absent

6. **Observations & Recommendations :**

1. Complaint is filed on behalf of student named Irshad Ahmed Thokar (hereinafter referred to as 'beneficiary'). Complainant submits that the beneficiary got selected in Ph.D. in session December 2018. Till 01.01.2021 he applied for hostel facility but the same was not allotted. On 01.01.2021, the hostel was allocated. After 3 months of allocation, the hostel warden served the notice to vacate the hostel room. No reason was given for serving the notice.
2. Respondent refuted the claim and submitted that on 26.11.2020 the beneficiary applied for temporary accommodation in IKS Guest House for a period of 2 months. Application was supported by affidavit affirming that the IKS Guest House facility will not be availed for more than two months. On 01.01.2021 the beneficiary was granted temporary accommodation in IKS Guest House for a period of 2 months, i.e. till 28.02.2021. It was extended for 1 more month, i.e. till 31.03.2021. Thereafter, he was asked to vacate the facility. However, he remained in IKS Guest House till 07.09.2021. Later, the beneficiary was given accommodation in S.A. Boys Hostel, Block 'B'. Hence, the Respondent claims that there is no violation of disability rights of the Complainant.
3. The complainant informed that this boys hostel is outside the campus and difficult for the complainant to commute from there to his classes on a daily basis. The most basic and important necessity of any person pursuing an educational course is that the educational institution is accessible for such person, whether divyang or enabled. In case of divyang, accessibility becomes a challenge because of



natural barriers presented by disability of such person. Therefore it becomes the responsibility of the establishment to provide supportive infrastructure to such divyang person so that she/he may access the infrastructure by avoiding impediments present because of disability.

4. Rights of Persons with Disabilities Act, 2016 also provides that every government educational establishment is duty bound to make buildings, campus and other facilities accessible for divyangjan. The same statute further provides that every government educational establishment is duty bound to provide reasonable accommodation according to individual needs and requirements. Provision of the statute is reproduced below for ready reference -

Section 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 and towards that end shall—

- (i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;
- (ii) make building, campus and various facilities accessible;
- (iii) provide reasonable accommodation according to the individual's requirements;

5. Intention of legislature is clear from plain reading of the provision. Legislature intended to solve the problem of accessibility for divyangjan and hence laid down that infrastructure must be accessible. Legislature went one step ahead and laid down that reasonable accommodation which has to be provided to divyangjan must be according to individual's requirements. Hence, it is certain from plain reading of the provision that legislature intended to solve the issue of accessibility at individual level according to needs and requirements of each individual. Legislature made it mandatory for educational establishments to provide accessibility solutions at



micro level and intended that educational establishments should provide solutions according to individual's needs and requirements.

6. It is also important to address issue of Reasonable Accommodation. 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.

7. 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.”

8. 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 divyangjan. 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 divyangjan in comparison with enabled person.
9. Physical and social environment are unfortunately designed in such ways that at times consciously and other times unconsciously, Divyangjan are subjected to exclusion, segregation. Misconceptions and preconceived notions relating to divyang employees' incapability to perform job also exist. Concept of Reasonable Accommodation plays a crucial role in removal of such barriers.
10. During online hearing this Court asked the Complainant to inform this Court about other residential facilities which are available inside the University campus and nearer to the building where classes are conducted. Complainant by email dated 02.02.2022 informed that

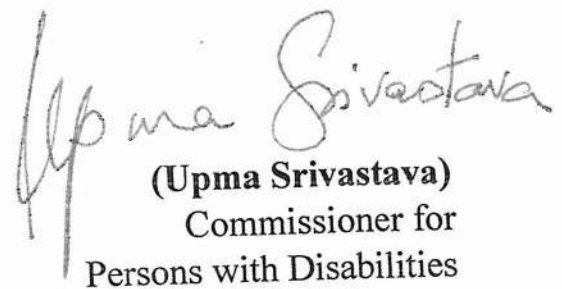
one such hostel namely Gani Kashmiri Scholars Hostel is situated near to the academic building.

11. This Court recommends that the Respondent shall provide residential accommodation in Gani Kashmiri Scholars hostel or any other which is nearest to the building where classes are organised and which is itself accessible for the Complainant. This Court further recommends that the Respondent shall conduct a meeting with the Complainant in order to understand his needs and shall provide suitable accommodation.

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

This case is disposed off.

Date: 05-04-2022


(Upma Srivastava)
Commissioner for
Persons with Disabilities



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12916/1023/2021

Complainant: Shri S.K.Verma
Force No. 961403399, CISF Unit BHEL
Haridawar, Uttrakhand

122
132054

Respondent: The Commandant
CISF Unit BHEL
Haridwar, Uttrakhand
E-mail: <bhel-hardwar@cisf.gov.in>

132055

Complainant: 40% MR

GIST of the Complaint:

प्रार्थी श्री सुनील कुमार वर्मा, आरक्षक/अग्नि का अपनी शिकायत दिनांक 21.09.2021 में कहना है कि सन् 2006 तथा 2007 में ऑन डियूटी करते समय रोड दुर्घटना में उनके सर पर गम्भीर चोट के कारण वह 40 प्रतिशत मानसिक दिव्यांग ग्रस्त हुए। प्रार्थी का आगे कहना है कि सी.आई.एस.एफ. विभाग के अधिकारी उनके दिव्यांगता प्रमाण पत्र को नहीं मानते और ना ही विकलांगता प्रमाण पत्र के अनुसार कोई सुविधा अथवा डियूटी दी जाती है तथा जबरदस्ती पी.टी. परेड एवं शिफ्ट डियूटी दी जाती है प्रार्थी ने आरोप लगाया है कि उन्हें मानसिक रूप से परेशान किया जा रहा है जिसके कारण वह उन्होंने वीआरएस (VRS) लेने का निर्णय लिया है।

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

3. कमाण्डेंट, केन्द्रीय औद्योगिक सुरक्षा बल, इकाई भेल, हरिद्वार का अपने पत्र दिनांक **12.11.2021** में कहना है कि भूतपूर्व आरक्षक/अग्नि श्री एस.के.वर्मा द्वारा दिनांक 19.04.2016 से दिनांक 30.09.2021 तक उनकी इकाई कार्य किया तथा तैनाती के दौरान बार-बारस्वैच्छिक सेवा निवृत्ति पत्र एवं कर्त्तव्य के प्रति अनिच्छा को देखते हुए प्रार्थी द्वारा प्रस्तुत दिनांक 30.09.2021 का स्वैच्छिक सेवा निवृत्ति पत्र को स्वीकार करते हुए उन्हें दिनांक 01.10.2021 (पूर्वाहन) से इकाई बीएचईएल हरिद्वार एवं बल की नफरी से हटा दिया गया।

4. After considering the respondent's reply dated **12.11.2021**, it has been decided to the case was listed for personal hearing on **04.01.2022**.

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

- Shri S.K. Verma – complainant
- Shri Satyadev Arya, Commandant on behalf of respondent

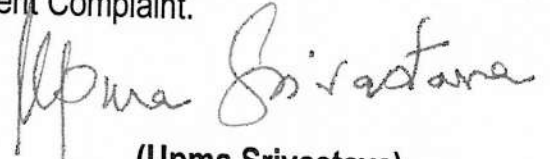
Observation/Recommendations:

5. Both the parties were heard.
6. Complainant submits that he was never given disability benefits which are given to other divyang employees in the establishment. Complainant produced disability certificate but the same was never considered by the Respondent. Further he submits that duties assigned to the Complainant are not suitable for divyang employees.
7. Respondent submits that the Complainant took voluntary retirement on 30.09.2021. The Complainant was never assigned night duties, he was always assigned duties during day time. Disability Certificate produced by him mentioned his disability as 26% hence he was referred to Standing Medical Board (SMB). SMB certified him fit for duties and 'not disabled' hence he was never given disability benefits, which are given to other divyang employees of the establishment.
8. During online hearing, Respondent apprised the court that the Complainant applied for VRS 4-5 times in the past. Each time the Respondent took emphatical view and rejected his application. However, this time he approached Respondent Head Quarters situated in Delhi and filed request their to accept his VRS application.
9. Respondent also apprised this court that the Complainant could retract his VRS within 90 days. This time limit has now expired.



10. The issue raised by the Complainant are related to duties which were to be performed by the Complainant during his service and the Complainant has already taken VRS. Complainant has also failed to prove that he was compelled to take VRS. On the contrary, Complainant's act of applying for VRS 4-5 times in the past reflects that he was keen to take this step. Complainant has also not raised any issue with respect to retirement benefits hence this Court is not inclined to interfere in the present Complaint.

11. Case is disposed off.



(Upma Srivastava)

Commissioner for Persons with Disabilities

Dated: 07.04.2022



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 13008/1023/2021

Complainant: Ms. Rekha Sharma

R/o F – 48, Ground Floor

Moti Nagar, New Delhi – 110015

E-mail: <subhashvashishth@gmail.com>

P32056

Respondent: The Registrar

National School of Drama

Bahawalpur House, 1, Bhagwandas Road

New Delhi – 110001

E-mail: <nationalschoolofdrama@gmail.com>

P32057

Complainant: 60% locomotor disability

GIST of the Complaint:

Complainant Shri Subhash Chandra Vashishth, Advocate has filed a complaint on behalf of Ms. Rekha Sharma. He has submitted that Ms. Rekha Sharma, complainant is Commerce graduate from Delhi University and she was appointed on contract basis for clerical post in respondent organization on 06 July 2006 vide an office Order for a period of 6 months along with 15-16 other employees. He further submitted that complainant has been continuously working in the respondent organization to the satisfaction of her superiors as her contract had been regularly extended with corresponding salary increase and she was also put on important duties on holidays and special permission was granted to her to attend office. Due to her good performance at the workplace, she also received the 'best employee award' twice and complainant has been attending her office duties continuously until 18 Nov 2021. He alleged that suddenly her family member received a call on the mobile that the complainant be advised not to attend office from the next day as her services are not needed and no reason was assigned for the abrupt action neither she received any notice nor any form of communication about the same. He further alleged that she has not received her salary for the month of October and November 2021 without any reason.

2. The matter was taken up with the Respondent vide letter dated **08.12.2021** under Section 75 of the RPwD Act, 2016 but despite reminders dated **30.12.2021 & 11.01.2022**, no response has been received from the respondent. Therefore, hearing scheduled on **17.03.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **17.03.2022**. The following were present:

- Adv. Subhash Chandra Vashishth on behalf of complainant
- Shri O.P. Sagar, Deputy Registrar and Shri N.P. Nidaria, Consultant on behalf of respondent

Observation/Recommendations:

3. Complainant submits that she was appointed on contract basis in July 2006 along with 15-16 other employees. On 18.11.2021 she received a call informing her that her services have been terminated. All the other employees who were appointed along with her are retained. She is the only employee with disability and her services have been terminated without any prior warning or notice.

4. During online hearing, Respondent informed this court that the Complainant was never terminated from the services. No letter of termination was ever issued to her. She was absent from her duties because of ill health and now she has joined the Respondent establishment w.e.f. 31.01.2022.

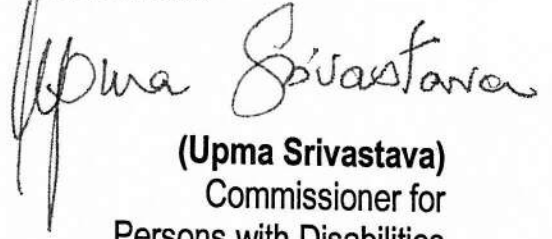
5. Complainant submitted that the contract period of the Complainant was extended only for 3 more months, whereas contract period of non divyang employees is extended for 6 months.

6. Respondent assured that the same shall not be repeated again. In future, contract period of all the contractual employees shall be extended for equal duration of time, irrespective of disability status. To treat divyang employees less than non divyang employees is an act of discrimination with divyang employees and violation of Section 20 of Rights of Persons with Disabilities Act, 2016, which further attracts penal provisions of the statute.



7. This court recommends that the Respondent shall treat the divyang employees of the establishment at par with non divyang employees of the establishment.

8. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 07.04.2022



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कार्यालय मुख्य आयुक्त दिव्यांगजन

OFFICE OF THE 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. 12884/1040/2021

Complainant:

Shri Jana Ranjan Dash,
Shikshya Shayak, N.U.P. School, Pipalpadar,
✓ Laxmipur, Koraput, Odisha-765013
Email: janaranjan1980@gmail.com

- R32106

Respondent:

(1) Chairperson,
National Institute of Open Schooling,
A-24/25, Rani Ramgarh Road,
Institutional Area, Sector-62, Noida-201309 (UP)
Email: [cm\(at\)nios\[dot\]ac\[dot\]in](mailto:cm(at)nios[dot]ac[dot]in)

- R32107

(2) National Institute of Open Schooling,
Regional Office, ELTI Campus,
Maitri Vihar, Chandrasekharapur,
Bhubaneswar-751023 (Odisha); Email: rdbbsr@nios.ac.in

- R32108

1. Gist of Complaint:

1.1 The State Commissioner for Persons with Disabilities, Government of Odisha forwarded the complaint of Shri Jana Ranjan Das, M-41, a person with 100% Speech & Hearing Impairment, regarding change of category from General to PH in DEIED Examination conducted by NIOS in March, 2019.

1.2 The complainant submitted that as an in-service candidate, while filling online application form for DEIED Examination, he had mistakenly registered as a General Candidate instead of PH candidate. He appeared in the examination and secured 48.4% marks. His result was not cleared as he could not secure 50% marks (in HSE XII/+2) as a General Candidate. Had his category been changed from General to PH he would have cleared the examination as the minimum marks prescribed for PH candidate is 45% in HSE. Despite chasing NIOS both Regional Office and Head Office his request was not heard.

2. Submissions made by the Respondent

2.1 NIOS, Regional Office, Bhubaneswar filed their reply dated 07.10.2021 and submitted that NIOS was entrusted to conduct the two year in-service training programme (DEIED) for untrained teachers teaching at elementary level by the Ministry of Education (then MHRD) as one time project for the session 2017-19 in

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collaboration with the concerned department of the State Govt. This facility was extended to untrained in-service teachers by Ministry of Education according to the Amendment to the Section 23(2) of the RTE Act to extend the period for such training to 31.03.2019 as per bill passed by the Hon'ble Parliament and DO No. 17-2/2017-EE.17 dated 03/08/2021, issued by Additional Secretary (E.E.II), MHRD. As per above DO, role & responsibility of the State Govt. for implementing DEIED project was as under:

- Identification of untrained in-service teachers;
- Registration of untrained in-service teachers in NIOS-DEIED portal; and,
- Verification of registration data (Login/Registration by the Individual Principal of the School)

2.3 NIOS only accepts the details of candidate provided by the State Government. In case of any correction, case has to be recommended by the authority of the State Govt., i.e. State Project Director (SPD) i.e. Director, SCERT, Govt. of Odisha.

2.4 The last supplementary/special exam of this course was held in January 2020 and after that NIOS had closed this project and subsequently all the manpower provided for this project at Regional Centre had also been discontinued. Registration for DEIED programme 2017-19 was completely online. Untrained teachers were required to fill the online registration form mentioning necessary details including category. The online form was further verified by the Principal (Employer) of the school and confirmed online to complete the admission process.

2.5 As per online Admission Status of NIOS DEIED Programme of the complainant, his category was mentioned as 1 - (General) and the same was verified by the principal of the School. His result status at NIOS portal was Not Certified due to not fulfilling the Eligibility Criteria of 50% marks in Class XII).

2.6 Any further updation & correction matters should be verified again by the SPD of this project i.e. Director, SCERT, Govt. of Odisha for consideration by NIOS. However, on receipt of the notice, Regional Centre Bhubaneswar forwarded the same to NIOS headquarters, NOIDA for consideration of the request of complainant, but the same has not been considered yet.

3. No reply has been filed by the NIOS (Head Office).

4. Submissions made in Rejoinder

The complainant in his rejoinder dated 18.10.2021 has reiterated his request, as his career is at stake.

5. **Hearing:** The case heard via video conferencing by Commissioner for Persons with Disabilities on 06.01.2022. The following were present:

- (1) **Complainant:** Jana Ranjan Dash - Absent
- (2) **Respondent:** Brijesh Singh, Section Officer (Legal)



6. Observations & Recommendations:

6.1 Complainant submits that he applied for admission in training programme conducted by the Respondent for untrained teachers. He submits that while applying online, he filled his PwD status as Non-PwD by mistake. He requested this court to recommend the Respondent to change his status from Non-PwD to 'PwD'.

6.2 Respondent submitted that his request was received and was forwarded to Head Office.

6.3 Later the Complainant informed this Court by mail that the issue has been resolved and his grievance has been addressed. Respondent also informed this Court that his result has been declared and his grievance has been addressed.

6.4 No intervention is warranted in the present Complaint.

7. This case is disposed off.

Date: 07.04.2022


(Upma Srivastava)
Commissioner
for persons with Disabilities





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कार्यालय मुख्य आयुक्त दिव्यांगजन

OFFICE OF THE 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.12943/1041/2021

Complainant:

Shri Gireesh Lal Srivastava

B-567, Barra-8, Kanpur Nagar-208027 (UP)

1232113

Affected Person:

Shri Akhilesh Kumar Srivastava

S/o Shri Gireesh Lal Srivastava

B-567, Barra-8, Kanpur Nagar-208027 (UP)

Email: akhileshsri155@gmail.com; Mobile: 8896798578

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Respondent:

Director,

Birbal Sahni Institute of Palaeosciences (BISP),

53, University Road, Lucknow-226007

Email: director@bsip.res.in; 0522-2742903

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1. Gist of Complaint:

1.1 Shri Gireesh Lal Srivastava, filed a complaint dated 05.10.2021 regarding Not allowing own scribe; and not allowing to meet the scribe provided by the Examining Body two days before to his son Shri Akhilesh Kumar Srivastava, a person with 45% Locomotor Disability (Right Upper Limb) in the recruitment exam conducted on 29.09.2021 for the post of LDC by the respondent BSIP.

1.2 The complainant submitted that his son Shri Akhilesh Kumar Srivastava is a person with 45% Locomotor Disability (both upper limbs) and he has difficulty in writing due to his disability. For this, as prescribed in the Guidelines for conducting written examination for Persons with Benchmark Disabilities, he had submitted the 'Certificate regarding physical limitation in an examinee to write' in APPENDIX-I. Despite submission of requisite documents, the respondent neither allowed his own scribe nor did allow meeting the scribe provided by the respondent two days before the written examination. The complainant further alleged that the respondent did not provide compensatory time to Shri Akhilesh as prescribed in the guidelines.

2. Submissions made by the Respondent

2.1 The respondent in their reply dated 01.11.2021 submitted that as per the advertisement published for the recruitment of LDC, the examination was held on

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29.09.2021 under the aegis/guidance of Uttar Pradesh Public Service Commission (UPPSC) at their centre at UPPSC Bhawan, Lucknow.

Shri Akhilesh had been granted extra half an hour time by the Invigilator/supervisor of UPPSC. It is incorrect to say that he was not given extra time to write the exam.

2.2 Shri Akhilesh was already informed before the examination was held on 29.09.2021, through email, that he would be provided with the Scriber by the Institute. Unfortunately, he did not contact the Institute for meeting the scriber two days prior to the examination. It was the duty of the complainant/candidate to have contacted the institute before the examination to meet the Scriber when he was already informed that Scriber would be provided by the examining Institute, which he failed. Hence no provision of RPWD Act, 2016 has been flouted.

2.3 The Respondent also submitted that unfortunately after holding of the first stage (Paper 1) of the examination, in which the complainant's son appeared, the Institute had to cancel the examination of Lower Division Clerk as held on 29.09.2021 & the result, due to unavoidable technical issues vide notice dated 11.10.2021.

2.4 Further, the examination in which complainant's son had appeared and he had grievances against it, has been cancelled, then no grievance exists and complaint is liable to be disposed off. The respondent prayed to dismiss the complaint.

3. Submissions made in Rejoinder

3.1 The complainant filed rejoinder dated 01.12.2021 and reiterating his complaint refuted the reply filed by the respondent. He added that respondent discriminated the right to bring his own scribe by the candidate and thereby, the respondent violated the guidelines for written examination. There was no mention in the advertisement published by the respondent of providing extra time in the examination and the examining body did not provide extra time to Shri Akhilesh.

4. **Hearing:** The case heard via video conferencing by Commissioner for Persons with Disabilities on 10.03.2022. The following were present:

- (1) Complainant: Shri Akhilesh Kumar Shrivasta
- (2) Respondent: Adv. Sujata Srivastava

5. Observations & Recommendations:

5.1 Complaint was filed on behalf of beneficiary. Complainant is father of beneficiary. Exam was conducted by the Respondent establishment on 29.09.2021. Beneficiary applied for bringing his own scribe but the same was denied. Respondent also denied to provide extra time. Complainant has prayed before this court to issue directions to the Respondent to allow all divyang candidates to bring their own scribe in future and to give extra time in future examinations.



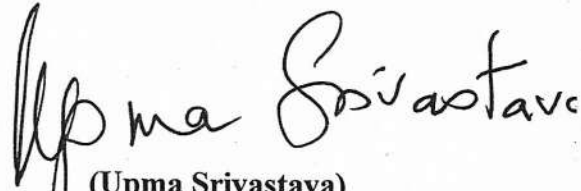
5.2 Respondent submits that extra half hour time was granted to the Complainant's son. Complainant's son was also informed, before the date of examination, that scribe will be provided to him. An opportunity was also granted to him to meet the scribe before the date of examination, however, he did not come to office to meet the scribe.

5.3 During online hearing, Respondent submitted that the Complainant was never estopped from bringing his own scribe. Complainant was informed by the Respondent to submit on affidavit personal details of the scribe, like his name, age, educational qualification etc. Respondent submitted that such affidavit is sought with an objective to preclude the candidates from lying.

5.4 This Court is satisfied with the Reply filed by the Respondent. To ask the candidate to file scribe's details on affidavit is not an act of discrimination. Hence, intervention of this Court in the present Complaint is not warranted.

6. This case is disposed off.

Date: 07.04.2022


(Upma Srivastava)
Commissioner
for persons with Disabilities

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सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

भारत सरकार/Government of India

Case No: 12860/1022/2021

Complainant : Shri Prince Singh,
Manager, Empl No. 113789
Central Bank of India
Near PHED Office
Rani Kothi, Deoghar,
Jharkhand-814112
Mobile No : 08948047580
E-mail : singh113789@gmail.com
Respondent : The General Manager
Central Bank of India
Chandramukhi Building,
Nariman Point, Mumbai -400021
Maharashtra
Contact No : 022-66387777
Email : gmhrd@centralbank.co.in

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GIST OF COMPLAINT

The complainant Prince Singh employee ID 113789 is an employee of Central Bank of India and working in the capacity of Branch Manager at Central Bank of India branch office Hindi Vidyapeeth Deoghar Jharkhand which is his home town. The complainant having 60 percent physical disability. He is unable to serve his duties far from his home town to any other place. He has received a transfer order from his home town Deoghar to Saran district of Bihar at Masterchak branch. The complainant further submitted that on behalf of himself another officer is being posted at his home town Deoghar branch. He has joined in this branch on 19.1.2020 and he is not eligible for any rotation. The complainant is unable to join anywhere from his hometown to discharge his duties. The complainant has requested to CCPD Court to give directive to the bank for cancel his transfer order as early as possible.

2. The matter was taken up with the Respondent vide letter dated 17.09.2021 under Section 75 of the RPwD Act, 2016.
3. In response, Assistant General Manager, HRD, Central Bank of India, Mumbai, vide letter dated 29.09.2021 submitted that the complainant is a native place of Jharkhand. He joined the bank in clerical cadre on 16.09.2011 at Deoria RO under Lucknow Zone. On his promotion to JMG Scale I on 06.01.2015, he was transferred to Lucknow RO and was posted to Rajajipuram branch where he was posted till June 2018. The complainant applied for promotion to Scale II in the Promotion Process 2018-19.

The respondent further stated that on his promotion he was retained in Lucknow Region and was placed at Faizabad Road branch. As per Government of India guidelines, completion of 2-year rural stint is a mandatory eligibility criteria for promotion to Scale 2. However, officers who have not been offered/completed rural stint in the past, if otherwise eligible are permitted to

participate in the promotion process and complete such rural stint, on selection, as a post-promotion criteria, subject to their furnishing an 'Undertaking' to the effect. The complainant has submitted undertaking to complete rural stint at the time of participating in the promotion process to Scale 2. The respondent stated that the complainant has been posted to various branches in Uttar Pradesh during the period 2011 to 2018 which were all urban centers. However, the present placement at Mastichak branch in Siwan Region, which is a rural Branch, is for completion of his rural stint subsequent to his promotion. His rural stint subsequent to his promotion to Scale II is yet to be completed.

4. In response, the complainant filed his rejoinder dated 26.10.2021 and submitted that his native place of Deoghar Jharkhand and he is asking from the respondent to get retained at his native place Deoghar Jharkhand. The complainant has joined the Bank in clerical cadre under PH category on 19.09.2011 at Deoria RO under Lucknow Zone. On promotion to JMG Scale 1 on 06.01.2015, he was transferred to Lucknow RO on his request to get better medical facilities at Lucknow. On promotion to Scale 2 in the promotion process 2018-19 he was retained in Lucknow at Faizabad Road Branch. After that in 2019, he was transferred to his home town Deoghar Jharkhand on his request because he was unable to stay at Lucknow as his father has died in 2019.

The complainant further submitted that at present he has joined at Mastichak branch in Siwan Region under the extreme pressure of the respondent. They have stopped his salary, declined his leave and harassing through memo. The complainant once again requested to the Hon'ble Court to give direction to the bank for cancel his transfer order as early as possible because he is forcibly transferred from his native place Deoghar Jharkhand to Mastichak Bihar as vacancy was available there in Deoghar Jharkhand.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 25.01.2022. The following were present:

- i) Shri Prince Singh – Complainant
- ii) Shri B.S. Harilal, Field General Manager– Respondent

Observation /Recommendations:

1. Complainant submits that he was posted at his native place, i.e. Deogarh, Jharkhand. Later he was transferred to Saran, Bihar. Complainant filed this Complaint before this Court praying for his retention at his native place and cancellation of his transfer.
2. During online hearing, Respondent informed this Court that a similar case of the Complainant is already pending before Hon'ble High Court of Jharkhand.
3. Since the issue is already pending before Hon'ble High Court hence interference of this Court in the present Complaint is not warranted.
4. This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 07.04.2022



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

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

भारत सरकार/Government of India

Case No: 12953/1022/2021

Complainant : Shri Madan Prasad
S/o Shri Shivalal Sao
Aastha Space Town
Near Ganga Memorial Hospital
Road No. 04, Dimna Road, Mango, Jamshedpur,
Jharkhand-831012
Mobile No. 08709346228
Email: madanprasad1112@gmail.com

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Respondent : The Manager
Central Bank of India
Chander Mukhi, Nariman Point,
Mumbai-400021
Contact No: 022-66387891
Email: gmhrd@centralbank.co.in

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GIST OF COMPLAINT

The complainant Shri Madan Prasad, 70% Locomotor disability submitted that he is an employee of Central Bank of India and he is working in the capacity of Branch Manager at Central Bank of India, branch office (Tata Iron and Steel Company Ltd), Tisco Gate N Road, Branch, Jamshedpur which is currently his home town. The complainant is unable to serve his duties far from his home town to any other place. The complainant further submitted that one month earlier he has received his transfer order from his home town Jamshedpur, Jharkhand to Gopalganj district of Bihar at Nechujalapur branch and on behalf of myself another officer is being posted at his home town (Tata Iron and Steel Company Ltd), Tisco Gate N Road branch, Jamshedpur, Jharkhand. The complaint has joined in this branch on 25/07/2019 and he is not eligible for any rotation but he has been transferred a month earlier.

The complainant further stated that he is unable to join anywhere from his home town to discharge his duties. The complainant has requested CCPD Court to give direction to the respondent for cancel his transfer order as early as possible.

2. The matter was taken up with the Respondent vide letter dated 02.11.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Dy. Manager, Central Bank of India, vide his letter dated 11.11.2021 submitted that the complainant is a native place of Chaurma in Bihar, and he joined the bank in clerical cadre in Anand Region under Ahmadabad Zone on 16.03.1998. The respondent further submitted that on his promotion to officer cadre in May 2008, the complainant was posted to Jamshedpur under Ranchi Region. In August 2013, the officer opted for promotion to scale II and retained in the same region on his promotion as manager. On 16.08.2021 the complainant was transferred to B/o Nechujalapur under Siwan Region to complete his mandatory rural placement.

The respondent further submitted that as per the govt. guidelines, of 2 years rural stint is a mandatory eligibility criteria for promotion to Scale-2. However, officers who have not been offered/completed rural stint in the past, if otherwise eligible are permitted to participate in the promotion process and complete such rural stint, on selection, as a post-promotion process and complete such rural stint, on selection, as a post-promotion criteria, subject to their furnishing on 'Undertaking' to the effect.

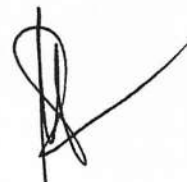
The respondent further submitted that the complainant service records indicate that he has been posted to various branches in Ranchi region from 2008 to July 2021 which were all urban centers. However, the present placement at B/o Nechujalpur under Siwan Region, which is a rural branch, is for completion of his rural stint subsequent to his promotion. His rural stint subsequent to his promotion to Scale II is yet to be completed. The complainant was transferred to complete the mandatory rural stint of two years as per Govt. of India guidelines.

4. The complainant filed his rejoinder dated 16.11.2021 submitted that he has applied for normal request transfer from Anand in Ahmadabad zone to Ranchi in Patna zone on July 2011, as that time his residence is at Ranchi in Jharkhand. As per the Govt. guidelines vide DOP&T O.M. No. 36035/3/2013 dated 31.03.2014, the PwDs may be exempted from the routine transfer. They should be given accessible and barrier free environment at workplace and preference in rotation/transfer posting. But the respondent totally failed to adhere the guidelines and choose to ignore the transfer policy for differently abled staff framed by the government of India. His transfer order to join at Nechua Jalalpur about 800 KM in Siwan Region from Tiscogate Branch, Jamshedpur come on 13.08.2021 after completion of all type of transfer posting which was held on 31.07.2021. His branch was changed merely after completion of 2 years in the region, and he was placed in a branch where accessibility is extremely difficult for any handicapped as there is no local transport available from the nearest city. However, the complainant not satisfied with the comments submitted by the respondent and requested to CCPD Court to consider his request to transfer him back to his previous posted branch in Ranchi.

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.

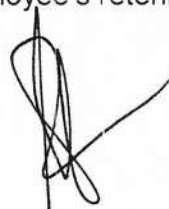
2(d) - "care-giver" means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability.

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. In the present case, the Complainant who was posted in her hometown, Jamshedpur was transferred to Gopalganj, Bihar.

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

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

32. As mentioned above, in the case of ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020, hon'ble Delhi High Court has already settled the issue. 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.

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

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

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

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

- a. SECTION 20 (2) OF RPWD ACT, 2016
- b. SECTION 20 (5) OF RPWD ACT, 2016
- c. O.M. No. 14017/16/2002 dated 13.03.2002 and O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T
- d. O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance
- e. O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T

All these provisions have been explained in the preceding paragraphs.

37. This Court recommends that the Complainant shall be transferred back to Jamshedpur, Jharkhand and further recommends that the Respondent shall frame separate transfer and posting policies for divyang employees.

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

The case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 07.04.2022



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: 12945/1023/2021

Complainant: Shri M. Manohar Babu
H.No. 40/811-C, Srinivasa Nagar
Opp. Sanchar Bhawan, Kurnool – 518004
Andhra Pradesh

R32020

Respondent: The Principal Accounts General (Audit)
Office of the Accountant General
D.No. 54-14/5-17/A, Road No. 12A/10A
Bank Colony, Bharathi Nagar, Gunadala Post
Vijayawad – 520008, Andhra Pradesh
E-mail: <mallikarjunal@cag.gov.in> <rajaniS@cag.gov.in>
Tel: 040-23231414

R32021

Complainant: 62% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **07.10.2021** submitted that his father was working in Police Department as R.S.I. and retired on 30.06.2021. He further submitted that his mother expired in 2007 and his father on 24.05.2021. After that he had applied for family pension but till date no response has been received.

2. The matter was taken up with the Respondent vide letter dated **20.10.2021** under Section 75 of the RPwD Act, 2016 but despite reminders dated **08.11.2021 & 23.11.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **18.01.2022** but due to administrative exigencies, hearing re-scheduled on **10.03.2022**.

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

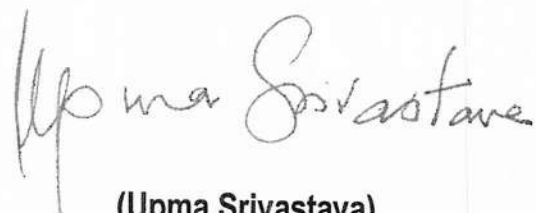
- Shri M. Manohar Babu - Complainant
- Shri R.V.K.Sai Gandhi, Sr. Dy. Accountant General & Shri Jitendra Nath Sharma, Dy. Accountant General on behalf of respondent

[Signature]

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Observation/Recommendations:

3. Father of the Complainant was an employee in the Respondent establishment. He was posted as R.S.I. His date of retirement was 30.06.2009. Father died on 24.05.2021. Complainant's mother died on 28.08.2007. Complainant applied for a Family Pension on 30.07.2021. Till date Family Pension has not been issued in his favour.
4. Respondent submitted that the proper channel to apply for family pension is to apply through the Pension Sanction Authority. Complainant applied directly to the Accountant Office. Complainant's application was received on 04.08.2021. Through a letter dated 05.10.2021, he was informed to apply through proper channel.
5. Issue between the two parties is not denial of Family Pension but that of a procedure through which one has to apply. Respondent is correct to deny the Family Pension because the Complainant has not approached through proper channel. At the same time, it is understood that the Complainant may not be knowing about the correct procedure to apply.
6. Respondent is recommended to guide the Complainant about the correct procedure either by self or through liasoning officer.
7. Case is disposed off.



(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 11.04.2022



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 13009/1021/2021

Complainant: Shri Sushil Kumar

Flat No. D-206, Green Field -1, Hingna
Road, Wanadongari, Nagpur - 441110

E-mail: <rahulwasnikngp@gmail.com>

P32041

Respondent: The Secretary

Ministry of Defence

Department of Defence Production

Directorate of Ordnance, 10-A

S.K. Bose Road, Kolkata - 700001

E-mail: <ofaj.ofb@nic.in>

P32042

Complainant: Shri Sushil Kumar, 53% Hearing Impairment

GIST of the Complaint:

Advocate Shri Rahul M. Wasnik filed a complaint on behalf of Shri Sushil Kumar, who was appointed as Machinist Semi -Skilled, Group 'C' with Grade Pay Rs. 1800 under PwDs quota in the respondent organization on 30.09.2008 and he was promoted time to time on merit and against the existing vacancies. He further submitted that presently complainant is holding the post of Machinist High Skilled - I with Grade Pay of 2800/- under Group 'C' since 01.10.2016 and is eligible for promotion to the post of Machinist (Master Craftsman), therefore, Complainant has requested to respondent organization on 05.10.2019, 27.02.2021 & 03.06.2021 respectively for his promotion but respondent has denied and informed him that there is no provision of reservation in promotion to the disabled persons. He has requested to direct the respondent to maintain 100 points reservation roster for PwDs and grant promotion to the post of Master Craftsman under PwD quota.

2. The matter was taken up with the Respondent vide letter dated 08.12.2021 under Section 75 of the RPwD Act, 2016.

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3. Works Manager, Ordnance Factory, Ambajhari, Nagpur vide letter dated **10.01.2022** submitted that after the enactment of RPwD Act, 2016, DoP&T has issued an OM dated 15.01.2018 providing inter-alia that four percent of the total number vacancies to be filled by direct recruitment in the cadre strength in each Group of posts i.e. Group A, B, & C shall be reserved for PwDs. However, as per the OM, there is no provision for reservation in promotion for persons with benchmark disabilities.

4. Complainant vide letter dated **09.02.2022** reiterated his complaint and informed that he is not satisfied with the reply of the respondent.

5. After considering the respondent's reply dated **10.01.2022** and the complainant's rejoinder dated **09.02.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **15.03.2022**.

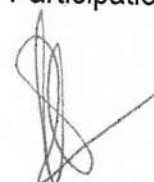
Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **15.03.2022**. The following were present:

- Advocate Shri Rahul M. Wasnik on behalf of complainant
- Shri Golden Babu, Dy. Director on behalf of respondent

Observation/Recommendations:

6. Complainant submits that he was appointed on 30.09.2008 on the post of Mechanist (Semi-Skilled). Thereafter, he was promoted 3 times. His last promotion was in 2016 to the post of Mechanist High Skilled - I. Complainant submits that he is eligible for promotion to the post of Mechanist (Master Craftsman). His grievance is that the Respondent is not extending reservation in promotion. If extended he can be promoted to the post of Mechanist (Master Craftsman). Respondent has refuted the allegations and submitted that as per DoPT guidelines, reservation in promotion to divyangjan is not given.

7. On the issue of reservation in promotion, it is indispensable to note that RPwD Act, 2016 is not the first legislation for rights of Persons with Disabilities. Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995



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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 once the post is identified, it must be reserved for PwD irrespective of the mode of recruitment. Therefore, hon'ble Supreme Court extended the benefit of reservation in promotion to persons with disabilities, even though there was no such specific provision.

8. The judgment was delivered in year 2016 and the judgment was related to 1995 Act. New legislation was passed by hon'ble legislature of the country in year 2016. Title of the legislature is – RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016. It came into effect on 19.04.2017. This act of 2016 has specific provision for reservation in promotion for persons with disabilities (Section 34). It also contains other provisions which grant more rights to Persons with Disabilities. This legislation also contains certain provisions which determine duties of appropriate government establishments towards Persons with Disabilities. Perusal of both 1995 Act and 2016 Act does not in any way reflect that legislature, by introducing 2016 legislation, intended to diminish or shrink the rights of Persons with Disabilities. Similar view was adopted by Hon'ble High Court of Uttarakhand, whereby court held that judgments rendered in the light of provisions contained in Act no. 1 of 1995 still hold good under the new Act (2016 Act).

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

10. 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.



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11. In view of the clear directions of the Hon'ble Supreme Court and as 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

12. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



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: 12986/1021/2021

Complainant: Shri V. Madhu Kumar
Plot No. A – 98, H.No. 4-32-1061
Near Jal Kanya Hotel, Phase-02, Allwyn Colony
Kukatpally, Hyderabad – 500072
E-mail: <madhukumarv@uiic.co.in>

—1232039

Respondent: The Chairman-cum-Managing Director
United India Insurance Co. Ltd
"NALANDA", 4th Lane, Uthamar Gandhi Salai
Nungambakkam High Road, Chennai – 600034
E-mail: cmdsect@uiic.co.in

—1232040

Complainant: 86% Locomotor disability

GIST of the Complaint:

Complainant Shri Madhu Kumar, Assistant Manager vide complaint dated **09.11.2021** submitted that he had joined as a Assistant (Typing) in 1991 and promoted to the Cadre of Stenographer during the year 2000, Administrative Officer (Scale-1) during the year 2010 and Assistant Manager Scale - II in the year 2016 – all these promotions were given to him on account of Seniority-cum-Merit but not under 'Reservation in Promotion to PwDs. During the year 2021, he had qualified promotional exam for the post of Dy. Manager Scale –III and despite having good seniority marks with Technical Qualification, he was not considered for promotion.

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

3. Dy. General Manager(HR), United India Insurance Co. Ltd vide letter dated **22.12.2021** inter-alia submitted that the parameters of selection as per the policy was marks in pre promotion examination -40, APAR – 40 & Interview – 20 and complainant score on various parameters are:

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Parameter	Fast Track Channel
APAR	39
Seniority	NA
Qualification	NA
Examination Marks	26.004
Interview	14
Total	79.004
Cut off Marks	83.2
Contingency	82.04

Therefore, he could not fall within the cut off marks under this channel.

4. Complainant vide letter dated **27.12.2021** reiterated his complaint and submitted that he is eligible for maximum APAR Marks of 40 – a combined/conjoined reading of the APAR for the year 2018-2019, 2019-20 and 2020-21 confirms his performance is 'outstanding'. He has requested to advise the respondent to extend reservation in Promotion to the complainant as per the guidelines framed by the DoP&T in accordance with the directions of Supreme Court of India.

5. After considering the respondent's reply dated **22.12.2021** and the complainant's complaint and letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **17.03.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **17.03.2022**. The following were present:

- Shri V. Madhu Kumar – complainant
- Shri Rajesh Khanna, DGM (HQ) on behalf of respondent

Observation/Recommendations:

6. Complainant submits that there are two methods of promotion in Respondent establishment - one is Normal Track and another is Fast Track. In Normal Track, Complainant scores 39 marks out of 40 in assessment of last three years' APARs. His combined total marks for APARs, written exam and interview are 55.77, whereas cut off

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marks are 56.29. He fell short of 0.52 marks. Complainant submits that in assessment of APARs he must have been awarded 40 marks because his grades in last three years APARs is A with outstanding performance. Complainant also took recourse of Fast Track method of promotion, in which he was awarded less marks in interview. He submits that he performed well in interview still was given less marks.

7. Respondent refuted the claims and submitted that the Complainant was given Grade A with outstanding performance by Reporting Officer in APAR of years 2018-19, 2019-20 and 2020-21. However in year 2020-21, he was given 'exemplary performance' by the Reporting Officer, but the Accepting Officer gave only A and did not accept, 'exemplary performance' given by the Reporting Officer. For 2018-19 and 2019-20, the Accepting Officer also gave 'outstanding performance' along with Grade A. Hence he was not awarded maximum marks, i.e. 40 and was given 39 marks in APAR assessment.

8. To resolve the issue assistance of 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.

9. 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



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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."

10. 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.



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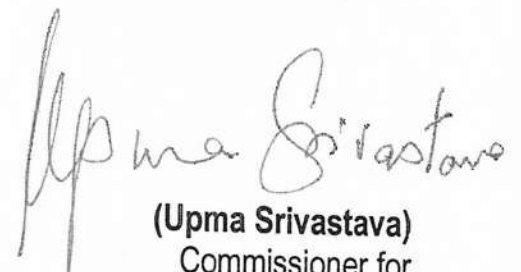
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11. In the present case Respondent can opt to apply the concept of Reasonable Accommodation and make some changes to accommodate any Visually Impaired candidate who might have qualified all the stages of the recruitment process but failed to get selected because of failing to secure 'qualifying marks' in last round. In the present circumstances 'Reasonable Accommodation' can be applied by relaxing the criterion adopted for recruitment. Since the Respondent found no one suitable hence qualifying marks can further be relaxed to accommodate any candidate who qualified all the stages of recruitment process despite of challenges she/he might have faced because of his disabilities.

12. Reference can be made to DoPT OM No 36035/2/2017-Estt.(Res) dated 15.01.2018, whereby Para 11 talks about relaxation of standard of suitability. As per the OM if sufficient number of candidates are not able to qualify, the examination on the basis of general standards, candidates belonging to PwBD category may be selected as per relaxed standards to fill up remaining vacancies reserved for them.

13. In the present Complaint, the Complainant fell short of 0.52 marks only. It is certain that despite of all the challenges and hinderances, the Complainant reached the level where he fell short of less than 1 marks when he was assessed on general standards. Since, the Complainant had to put extra efforts because of his disability hence it is unfair to evaluate him on general standards hence this Court recommends that the Respondent shall relax the standards and shall promote the Complainant.

14. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



(57)

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

12998/

Case No: 1021/2021

Complainant: Shri R.P. Singh

D-23, Kalindi Bihar Post Office

Yamuna Bridge, Agra – 282006

E-mail: <ramprakash172002@gmail.com>

—P32043

Respondent: The General Manager

Canara Bank

Personnel Management Section

Human Resources Wing, Head Office, Bangaluru – 560002

E-mail: <bissinics@canarabank.com>

<hrwing@canarabank.com>

—P32044

Complainant: 70% Locomotor disability

GIST of the Complaint:

Complainant Shri R.P. Singh, Manager, Currency Chest vide complaint dated 22.11.2021 inter-alia submitted that he had given twice time promotion willingness from Scale 2nd to 3rd on 08.11.2019 and 20.02.2021 respectively, but could not selected by the Competent Authority while he is highly qualified an LLM and worked experience in-charge of Agra Account Section and in-charge of Currency Chest. He has also requested for transfer nearest to his home at Naraich.

2. The matter was taken up with the Respondent vide letter dated 30.11.2021 under Section 75 of the RPwD Act, 2016.

3. Chief General Manager, Canara Bank vide letter dated 10.01.2022 inter-alia submitted that complainant Shri R.P.Singh is working at the Currency Chest, Agra from 25.05.2019 till date which is close to his residence and his request for transfer to Naraich Branch could not be considered due to non-availability of vacancy. They further submitted that the complainant joined the services of the Bank on 26.06.1990 as a Clerk at our Tundla Branch, Agra and got promoted as an Officer on 01.04.2013 and subsequently as a Manager Scale – II on 07.06.2016. They further submitted that as per the guidelines of the

(158)

Bank, he became eligible to apply for promotion to Scale – III in the years 2019 and year 2020. However, he could not be successfully promoted to Scale – III for want of sufficient qualifying marks in both the written examination and interview. They further submitted that complainant has again applied for promotion and has appeared for the written examination held on 05.12.2021. His promotion to Scale – III shall depend on his performance.

4. Complainant vide letter dated **23.01.2022** reiterated his complaint and submitted that he is presently working in Currency Chest Agra since 02.05.2019 which is not nearby his residence while B/o Narish, Poiya, Trans Yamuna is nearer to his residence.

5. After considering the respondent's reply dated **10.01.2022** and the complainant's complaint and letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **15.03.2022**.


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

- Shri R.P. Singh – complainant
- Shri M.K. Srinivas Pai, DGM on behalf of respondent

Observation/Recommendations:

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

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



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

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

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

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

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

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



- (168)
- 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

12. 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

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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

13. 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.

14. 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.

15. 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

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

17. 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

18. 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.

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

20. 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.

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

22. 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.

23. 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.

24. 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.

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

26. 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.
27. **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?
28. 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.
29. 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'.
30. 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.

31. 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

32. 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.

33. 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

34. Complainant submits that from 2016 to 2019, the Complainant has been transferred 6 times. Currently he is posted at Agra Currency Chest office. Whenever the Complainant was transferred, TA/DA was not given to him. Prays this court to post him to Narich branch, which is near to his home. Respondent submits that the Complainant's present place of posting is near to his home. Cannot be posted to Narich branch because of non availability of vacancy at Narich branch. TA/DA was not given to him because he was transferred on his own request

35. As delineated above, O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T enunciates that divyang employees may be posted near to their native place. Objective of the O.M. is to provide conducive environment to divyang employees where they can perform their duties efficiently. This O.M. is applicable in the present Complaint as well.

36. This Court recommends that the Complainant may be posted nearest to his home location so that he does not have to face problem in commutation and problems related to accessibility may be addressed. It will provide a conducive environment to the Complainant and help him in discharging his duties efficiently.

37. Case is disposed off.



(Upma Srivastava)
Commissioner for Persons with Disabilities

Dated: 12.04.2022



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

1687

Case No: 13032/1023/2021

Complainant: Shri Maguni Sahu, Accountant
O/o the Zonal Accounts Officer,
Central Board of Direct Taxes
Aayakar Bhawan, 5th Floor, Rajaswa Vihar
Bhubaneswar – 751010, Odisha
E-mail: <maguni.sahu@yao.co.in>

— R32045

Respondent: The Controller General of Accounts
M/o Finance, Department of Expenditure
Govt. of India, Mahalekha Niyantarak Bhawan
E-Block, GPO Complex, INA, New Delhi – 110023
E-mail: <zaobhubaneswar@gmail.com>

— R32046

The Principal Chief Controller of Accounts
Central Board of Director Taxes
9th Floor, Lok Nayak Bhawan
Khan Market, New Delhi – 110003

— R32047

Complainant: 55% locomotor disability

GIST of the Complaint:

Complainant Shri Maguni, Sahu, Accountant vide complaint dated **06.12.2021** has requested to (i) re-review and appropriate grading may be given in APAR for the period of 30.12.2020 to 31.03.2021. (ii) wrongful deeds done in Service Book be reviewed and struck out the said entry (iii) deduction of CGHS contribution for the period of May 2020 to October 2021 @ Rs. 250/- per month without proper knowledge, Shri Jasobanta Swain has taken wrong steps. His deduction amount along with interest from the date of deduction to till to date should be recovered from Sr. Jasobanta Swain and the same should be paid to him.

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

[Signature]

3. Zonal Accounts Officer, Central Board of Direct Taxes, Bhubaneswar vide letter dated **17.01.2022** inter-alia submitted that (i) grading has been awarded keeping in view the overall performance of the official during the period 30.12.2020 to 31.03.2021 and the official has claimed to have done the post-check work of the outstation DDOs in his APAR for the said period which is not true (ii) entry of Memo in service book is done by Head of Office in accordance with rules (iii) deduction of CGHS contribution, the same was deducted as mandatory deduction for all the employees working under the Zonal Accounts Office, CBDT, Bhubaneswar, as "Bhubaneswar" is a CGHS covered city. (iv) refund of the subscription amount for the period May 2020 to October 2021, CGHS subscription recovered in the salary bills got credited to Head of account 0210 through book adjustment and Major Head 0210 is a credit head only. Hence, debit from the Major Head 0210 is not admissible.

4. Complainant vide letter dated **01.02.2022** reiterated his complaint and informed that he is not satisfied with the reply of the respondent.


5. After considering the respondent's reply dated **17.01.2022** and the complainant's rejoinder dated **01.02.2022**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **17.03.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **17.03.2022**. The following were present:

- Shri Maguni Sahu - complainant
- Adv. Ghasi Ram Verma on behalf of respondent

Observation/Recommendations:

6. Complainant submits that he was awarded Grade 5.19 by one Mr. Swain, who was not even his Reviewing Officer. During financial year 2019-20 he was given Memorandum. Complainant submitted his explanation. Thereafter, the Complainant never received any adverse information. Despite of that, entry has been made in service book of the Complainant. Complainant further submits that Rs. 250 is deducted towards CGHS facility

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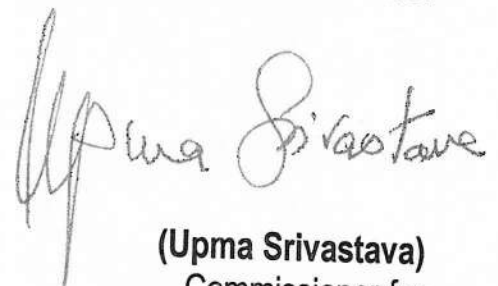
whereas, the Complainant does not even reside within CGHS facility area. Complainant also submits that he joined in Zonal Office, Bhubaneswar on deputation. He submitted application for his permanent absorption to Chief Controller of Accounts, New Delhi. Instead of forwarding his application, he submits that Sri Swain asked him to bribe of Rs. 30,000.

7. Sri Swain was delegated the powers of head of office hence Complainant's APAR was forwarded to him. Complainant does not have right to choose his own reviewing officer hence his Complaint is invalid. Respondent being Zonal Accounts Officer & Head of Office, Sri Swain is the reviewing officer is all the Group B & C employees. Advance towards CGHS was deducted of all the officers and was started in May 2020. In July 2021 he objected towards the same. The deduction was stopped in November 2021. Regarding refund of deducted amount, letter has been written to Additional Director, CGHS, no reply has been received till date. Regarding forwarding the application of absorption, allegations of bribe are false. Also, the same issue was raised by the Complainant before hon'ble High Court of Orissa and is pending before the court.

8. After perusal of Complaint and Reply filed by the parties and after considering the arguments forwarded by both the parties during online hearing, this court concludes that the issues raised by the Complainant are of administrative nature which are not connected with disability rights.

9. This Court recommends that the Complainant may raise all these issues before the Grievance Redressal Officer and further recommends that the Respondent shall conduct counseling of both the parties.

10. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 13029/1021/2021

Complainant: Shri Ritesh Kumar Goyal

Opp. Saraswati Sishu Mandir School

Railway Road, Dadri, Gautam-Budh Nagar

Uttar Pradesh – 203207

E-mail: <advocate_riteshgoyal@yahoo.in>

232048

Respondent: The Managing Director

Bank of Baroda, Baroda Corporate Centre

Plot No. C -26, Block G, Bandra Kurla Complex

Bandra (East), Mumbai

E-mail: <md.ceo@bankofbaroda.com>

232049

Complainant: 55% Locomotor disability

GIST of the Complaint:

Complainant Shri Ritesh Kumar Goyal vide complaint dated **09.12.2021** submitted that he was Manager (Law) in Bank of Baroda and he had participated in promotion exercise 2018. He further submitted that he had secured 91 marks in written, 9 in interview and 87.33 in APAR average but all Law Officers in Scale 01 to 02 posted in Delhi except him.

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

3. Head (HR Operations), Bank of Baroda vide letter dated **05.01.2022** inter-alia submitted that Shri Ritesh Kumar Goyal joined the services of the Bank on 03.07.2014 and resigned on 01.08.2018 and he made the complaint after the period of more than three years. They further submitted that Shri Goyal, Ex-Employee could not be promoted, since he had not secured the minimum qualifying marks in the Interview in which he was appeared before the members of Selection Committee.

[Signature]

4. Complainant vide rejoinder dated **11.02.2022** inter-alia submitted there is no resource available with him to discover the truth as no merit list was published by the Bank of Baroda. Hence, his cause of action has aroused when Bank of Baroda replied first time to his RTI application dated 26.10.2021.

5. After considering the respondent's reply dated **05.01.2022** 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 **29.03.2022** but due to administrative exigencies, hearing re-scheduled on **30.03.2022**.

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

- Shri Ritesh Kumar Goyal – complainant
- Shri Prateek Agnihotri, Head HR (Operations) on behalf of respondent

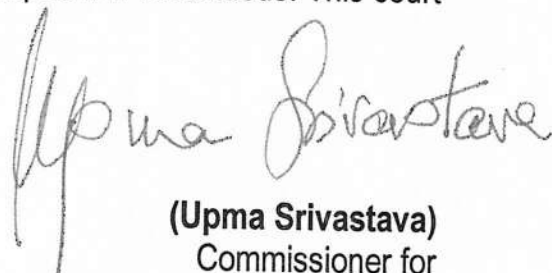
Observation/Recommendations:

6. Complainant submits that he appeared in promotion examination in 2018. He claims that despite of scoring good marks he was not promoted. He submits that he asked the Respondent to provide cut off marks but he was never provided the same. He claims that he was never posted to a branch near to his home.

7. Respondent refuted the submissions and submitted that the Complainant joined bank in 2014 and resigned on 01.08.2018. He appeared in exam, however he could not score qualifying marks and he was not promoted. He has filed Complaint after delay of 3 years which is not explained.

8. This court concludes that since the Complainant has now resigned, hence no relief can be granted to the Complainant because the present Complaint is infructuous. This court is inclined not to interfere in the present Complaint.

9. Case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12984/1023/2021

Complainant: Smt. Vijeta Jain
House No. 563, GF
Sector - 4, Vaishali, Ghaziabad
E-mail: <vijetajain060582@gmail.com>

-P32052

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

-P32053

Complainant: Person with 43% disability

GIST of the Complaint:

Complainant Smt. Vijeta Jain, Teacher (PGT-English) vide complainant 01.11.2021 has submitted that she is continuously facing discrimination, denial of various rights as well as undue harassment by various authorities of the KVS since long like (i) non sanction of Child Care Allowance (ii) Non-deposition of the NPS (iii) Delay in pay fixation as per provisions of MACP (iv) deduction of excess Income Tax TDS from the salary for the FY 2020-21 (v) short payment of Salary for the month of September 2021 & October 2021 (vi) Delay in issuance of Form-16 for the FY 2020-21 and FY 2019-20 (vii) over burden with work and (viii) issuance of Memorandum without any cause etc.

She has requested to pass the direction to the respondent (i) payment of Child Care Allowance alongwith interest (ii) deposition of the payment of Legacy NPS alongwith applicable interest (iii) payment of fixation of the pay (MACP) and release of the pay arrears (iv) payment of arrears of the pay for short payment of salary for the month of September and October (v) refunding of excess Income Tax deduction (iv) reissuing the correct Form -- 16 for the FY 2020-21 and (vii) appropriate administrative action against Shri Rajiv Mohan Lakhera, Vidyalaya Principal & Ms. Pramosh Bana.

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

3. Assistant Commissioner (Estt.I), KVS vide e-mail dated **03.01.2022** inter-alia submitted that (i) for sanction of child care allowance for the women with disabilities as DC, KVS (RO), Delhi is competent authority to approve the proposal. As soon as sanction order is received from the competent authority, the same will be paid to her (ii) Grant of Senior scale is centralized process and this is a time bound process and this office cannot make any delay in this regard (iii) whenever any employee claims exemption in income tax, the DDO has rights to verify the relevant documents but despite many reminders/messages still she has not submitted the possession letter/registry copy etc of her flat purchased on Bank loan. Despite this the office has stopped the deduction of Income Tax from her salary w.e.f. August – 2021. (iv) regarding short payment of salary – she was on child care leave and joined the Vidyalaya on 6th September 2021, her increment due in the month of July 2021 was shifted from 1st July to 06.09.2021 as per DoP&T norms. So the salary bill was prepared for 05 days of September 2021 with existing basic pay and for rest of 25 days of September, salary was prepared after granting the increment. Further submitted that after senior scale the double transport allowance was not sanctioned by KVS, RO, Delhi even then this was paid by this office as proposal for grant of double transport allowance has already sent to KVS, RO, Delhi so there is excess payment of salary for the month of Sep & October 2021 as claimed by Smt. Vijeta Jain short payment.

4. After considering the respondent's reply dated **03.01.2022** and the complainant's complaint and letters, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **22.03.2022**.

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

- Smt. Vijeta Jain & Shri Satendra Jain, Husband of the Complainant – complainant
- Shri Anurag Bhatnagar, Assistant Commissioner on behalf of respondent



Observation/Recommendations:

5. Complainant has filed multiple grievances. Complainant submits that her Child Care Allowance has not been sanctioned. Respondent refuted this claim and submitted that sanctioning of Child care allowance involve lengthy process. Permission to grant child care allowance has now been received and the same shall be granted to the Complainant very soon.
6. Second issue raised by the Complainant is related to NPS. Complainant submits that she has got NPS but calculation sheet has not been provided even after it was asked specifically. Respondent submitted that this issue is common with other employees of the establishment as well. Respondent assured this court that soon calculation sheet will be provided to the Complainant.
7. Third issue raised by the Complainant is connected with Income Tax deduction. Respondent informed this court that the Complainant was asked to submit the requisite documents in order to grant exemption from Income Tax deduction, however, Complainant did not submit the requisite documents.
8. Complainant also raised the issue of overburdening of work. Respondent refuted the claim and informed this court that the Complainant was assigned with the task of teaching students of another standard because teacher of that standard was on leave. This task was of temporary nature.
9. Complainant also raised the issue of payment of salary for the month of September and October 2021.
10. This court concludes that the issues between the Complainant and the Respondent are of administrative nature. During online hearing Respondent assured this Court that all the issues raised by the Complainant shall be personally examined by the Respondent.



11. Rights of Persons with Disabilities Act, 2016, by virtue of Section 20, casts duty on the government establishments to provide a conducive environment to its divyang employees. Such administrative issues must be resolved at the end of the establishment itself so that divyang employees can concentrate on performing their duties efficiently rather than running from one forum to another to get these issues resolved.

12. Considering the assurance forwarded by the Respondent, this Court recommends that the Respondent shall examine all the issues raised by the Complainant and shall resolve the same. Further this Court recommends that the Compliance Report of this Recommendation shall also be filed by the Respondent within 1 month from the date of this Order.

13. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



सत्यमेव जयते

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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 12918/1024/2021

Complainant: Shri G.Chezhyan

13/73, Mudaliyar East Street

Tallakulam, Madurai – 625002

Tamilnadu

P32050

Respondent: The Chief Post Master General

O/o the Chief PMG

Tamilnadu Circle, Chennai – 600002

E-mail: <staff.tn@indianpost.gov.in>

P32051

Complainant: 75% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **29.09.2021** submitted that he has been working in Office of the Chief Postmaster General, Chennai on Temporary basis since 2001 and he has requested to provide permanent job in the Department under persons with disabilities quota.

2. The matter was taken up with the Respondent vide letter dated **11.10.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **17.11.2021** submitted that as per the Recruitment Rule, there is no provision to consider the cases of outsiders engaged on temporary basis for appointment as a special case under PwDs quota.

4. After considering the respondent's reply dated **17.11.2021** 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 **04.01.2022**.

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

- Shri G.Chezhyan – complainant
- Shri C. Jaya Kumar Vel, Assistant Director (Recruitment) on behalf of respondent

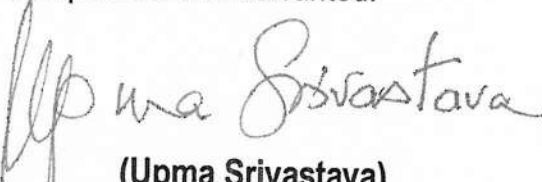
Observation/Recommendations:

5. Complainant is posted in Respondent establishment on contractual/temporary basis. By virtue of present Complaint he seeks regularisation of his services.

6. During online hearing, Respondent informed this court that the Complainant was never appointed on regular basis. His services were obtained when there was absence of regular employees. Nature of his job was contractual/temporary.

7. It is settled principle established by Hon'ble Supreme Court that contractual/temporary services, even if rendered for long time does not entitle the employee for regular appointment. Intervention of this court in the present Complaint is not warranted.

8. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022



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न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No: 13033/1024/2021

Complainant: Ruchir Pandurang Pawar
"Pebbles Urbania"
Flat No. E705, Siddharth Nagar,
Bavdhan Pune 411021
Email: ruchir2024@gmail.com

—132058

Respondent: Chief General Manger
Maharashtra Telecom Circle
BSNL Complex, 6 th floor, "A" Wing
Administrative Building, Juhu Road
Santacruz (W), Mumbai- 400054.
Email cgm_mah@bsnl.co.in

—132059

Complainant: 58% locomotor disability

GIST of the Complaint:

Complainant Shri Ruchir Pawar vide e-mail dated **14.12.2021** submitted that he had taken voluntary retirement as Sr. Sub Divisional Engineer from BSNL under VRS 2019 on 31.01.2020 and stayed in BSNL staff quarter C-3/1 CTO Quarter, Church Street, behind GPO Pune 411001 after retirement for 8 months as normal permissible period i.e. up to 30.09.2020. After completion of permissible period, he had applied for retention of quarter till 31 March 2021 on his daughter's educational ground, his permanent disability and prevailing corona situation at that time in Pune but due to waiting list of 10 employees for the said quarter his retention request was rejected and damage rent charges levied from 01.10.2020, which was twice of the rent under CROP. He has requested to refund the damage rent amount deducted from Ex-gratia payment i.e.Rs.189050.

2. The matter was taken up with the Respondent vide letter dated **20.12.2021** under Section 75 of the RPwD Act, 2016 but despite reminders dated **07.01.2022 & 21.01.2022**, no response has been received from the respondent. Therefore, hearing scheduled on **17.03.2022**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **17.03.2022**. The following were present:


- Shri Ruchir Pandurang Pawar – complainant
- Shri Kailash Morey, DGM (Admin) & Nodal Officer (Disability) on behalf of respondent

Observation/Recommendations:

3. Complainant submits that he took VRS on - 31.01.2020. Thereafter he was allowed to remain in government quarter for next 8 months, i.e. till 30.09.2020. This was permissible period. Then he applied to stay in the same accommodation on the ground of disability and daughter's exam and covid pandemic. His application was rejected on the ground that other 10 employees were waiting for the same accommodation. Still he kept the possession of the accommodation for approximately 2.5 months. For these 2.5 months market rent for the accommodation was deducted. Later the waiting list was abolished and the accommodation remained vacant. Complainant prays for refund of deducted rent amount.

4. During online hearing this court was apprised by the Respondent that the market rent has now been refunded of the Complainant. Since the issue has now been resolved hence intervention of this Court is not warranted.

5. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 12.04.2022