



सत्यमेव जयते

74

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: 12696/1022/2021

Complainant : Shri Jatinder Arora
S/o Shri Heera Pal
Flat No. 406, GHS, 6, Sector-20
Panchkula, Haryana-134116
E-mail : chdjatinderarora@gmail.com

Respondent : The Chief Executive Officer,
Employee Provident Fund Organisation (EPFO),
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
NewDelhi-110066

Contact No : 011-26172671
E-mail : cpfc@epfindia.gov.in

The Regional Commissioner
Employee Provident Fund Organisation
Ministry of Labour and Employment
Govt. of India
Regional Office, sCO-4-7, sector-17-D
Chandigarh-160017
Contact No : 2701190, 2701158, 2701135
E-mail : ro.chandigarh@epfindia.gov.in

GIST OF COMPLAINT:

The complainant Shri Jatinder Arora, person with 100% Visual impairment, recently he has got selected as SSA in EPFO and now for posting allotted in the Regional office Amritsar to join by 12th April 2021. The complainant made his representation to the EPFO office dated 26th March 2021 wherein he requested before the competent authority to change his regional office from Amritsar to Chandigarh on the ground that it would be very challenging and difficult to live along in a totally new city as no family member can go along with him. The complainant further stated that due to the blindness it is very difficult for him to manage daily household work for fulfilling his basic necessities such as food cloth etc...

The complainant further stated that he has permanently residing at Panchkula for the last many years with his family and Chandigarh regional office is nearest to his residence. Hence he is familiar with this city and also he will have support of his family members. So the complainant requested to EPFO to give joining in Chandigarh regional office.

The complainant further submitted that he got reply from the EPFO on dated 7th April 2021 in which competent officers has refused to consider his request and asked him to join the Amritsar regional office by 12th April 2021. Thereafter, he met the officer personally and he was forced to join the Amritsar office. EPFO officer asked him to first join the regional office Amritsar then they will get him transfer herein Chandigarh office but he don't understand why EPFO wants to cause him unnecessary hardship.

Therefore, the complainant has requested to consider his request and transfer him to regional office Chandigarh which is a basic right of the disabled person to posting near their native place.

2. The matter was taken up with the Respondent vide letter dated 13.04.2021 under Section 75 of the RPwD Act, 2016.

3. In response, respondent Sh. Shashank Kumar Pandey, Regional P.F. Commissioner-II (Legal), Regional Office, Chandigarh, vide letter no: PB/CHD/Legal/Notices/183 dated 20.05.2021 inter-alia submitted that Employees Provident Fund Organisation is an Autonomous/Statutory Organisation under the Ministry of Labour, Govt. of India and that it follows rules and provisions of the Govt. of India issued on the subject matter from time to time and adopted as such by the Central Board of Trustees (CBT) of EPFO. The respondent stated that no discrimination has been made against the complainant either in the course of his recruitment and subsequent appointment, or at the time his initial posting. None of the newly recruited Social Security Assistants (SSAs) have been posted to any office of EPFO other than Regional Office, Amritsar, and this decision to post all the newly recruited SSAs including one appointed on Compassionate Grounds to Regional Office Amritsar has been taken under the compelling circumstances of acute shortage of staff to the extent of 65% and expected vacancy due to retirement of 15 officials by December, 2021/within the year 2021-2022, further exacerbating the staff posting in that office.

The respondent further submitted that posting of complainant has been considered by Addl Central PF Commissioner (Zone) being the Cadre Controlling Authority purely on the administrative exigencies due to acute shortage of staff (65% shortage) at present and expected shortage due to retirements in Regional Office, Amritsar. Hence the Cadre Controlling Authority has not violated the provisions of the Circular dated 31.03.2014 which clearly specifies that the transfer of person with disabilities may be considered subject to administrative constraints.

The respondent further submitted that 06 candidates selected to the post of Social Security Assistant (SSA) in the Punjab region, out of which 03 candidates have joined till date. Since, in Regional Office, Amritsar, there are only 22 SSA/SSSAs in-position against 63 Sanctioned posts leading to shortage of 65.01% in clerical staff, Addl Central PF Commissioner (Zone), being the Cadre Controlling Authority had decided to post all newly recruited SSAs of Punjab region to Regional Office, Amritsar. The provisional order of appointment of the complainant was issued by Regional office, Chandigarh (the erstwhile region) as there is no Regional PF Commissioner-I in Regional office Amritsar, asking to complainant to join on duty at Regional office, Amritsar, by 12.04.2021.

The respondent submitted that the complainant was called for a meeting with Addl. Central PF Commissioner (Zone) and that he has apprised of the shortage of staff position at Regional Office, Amritsar, and the administrative exigencies arising due to the same. He has also been informed by office email dated 07.04.2021 that his request has been carefully considered, but could not be accepted at this stage due to acute shortage of staff at Regional Office, Amritsar, with a request to him join at Regional Office, Amritsar by the due date. He has also been intimated through email dated 07.04.2021 that his request may be considered at an appropriate time.

The respondent stated that as in the case of other newly recruited SSAs, the posting to Regional Office, Amritsar is the initial posting of Shri Jatinder Arora and not his transfer as averred by the complainant. The complainant is a newly recruited SSA who has not yet reported for initial duty as the SSA and, therefore, the question of his transfer at this stage does not arise. As it has been submitted, the initial posting of the complainant to Regional office, Amritsar, as in the case of other newly-recruited SSAs, was driven by administrative exigencies of acute shortage of staff (65% shortage) at present and additional shortage by December, 2021/ within the year 2021-22 due to expected retirement of another 15 officials in Regional Office, Amritsar.

The respondent further submitted that the initial positing of the complainant at Regional office Amritsar, consequent upon his appointment in Employees Provident Fund Organisation Punjab Region, is a purely administrative decision without any bias, mala-fide or arbitrariness and even the Hon'ble Supreme Court of India has held that when the transfer of any employee is not tainted by arbitrariness, illegality or bias, the Courts should not interfere.

The respondent further stated that the complainant is not entitled to any relief and that the present complainant is liable to be dismissed as such.

4. The complainant in their rejoinder dated 03.06.2021 submitted the following facts:-

i) Respondent in his reply has totally ignored the challenges and difficulties suffered by a person with visual impaired in his day to day life. It seems that responded has not even idea of the life of an employee with visual impairment, further it shows insensitivity of respondent towards his employees with visual impairments. Respondent should have not put together his normal employees and employee with visual impairment.

ii) Cadre controlling authority is underestimating day to day dependency and challenges of visually impaired person. The authority has relied on outer appearances while making the decision but in reality my outer appearance does not depict the severity of visual impairment because Petitioner is patient of retinitis pigmentosa in which patient looks absolutely fine by his appearance. Right now he is 100% blind at night and just have light reflection in morning and also he do not have side vision hence he has always need some caretaker or one of his family member along with him to fulfilment of his daily basic needs such as food etc. further to proof above sited facts he is ready to go under medical examination by eye specialist if required by respondent.

iii) The complainant is living alone in EPFO Accommodation in Amritsar, where he is facing huge hardship and challenges when it comes to fulfilment of basic needs such as food etc, which are necessary for every citizen to live life with dignity, also recognised as fundamental right under article 21 of constitution of India. In this Covid-19 pandemic it is also not safe to have some made to cook food for him due to permanent engagement of family in Panchkula this if not possible for his any family member to come in Amritsar to live along with petitioner.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.07.2021. The following were present:

- i) Shri Jatinder Arora - Complainant
- ii) Shri Gaurav, Advocate – Respondent

6. Observation / Recommendations:

- i) Complainant submits that he was selected on the post of Social Security Assistant. He was asked to report in Amritsar on or before 12 April 2021. Complainant requested to change the posting from Amritsar to Chandigarh. His native place is Panchkula, near Chandigarh.
- ii) Respondent submits that there is acute shortage of staff in Amritsar. Further, all 6 persons who were recruited along with the Complainant are posted in Amritsar office, none has been posted in any other office than Amritsar.
- iii) Complainant is Blind. Nature of disability of the Complainant compels him to be assisted in successful performance of basic functions of day-to-day life. Posting the Complainant away from his native place shall augment the difficulties and challenges faced by the Complainant.
- iv) Disability does not mean inability. A divyang person can perform an assigned task efficiently if conducive environment is provided to him to overcome natural barriers which hurdles her/his daily life. With same objective, Section 20(2) of Rights of Persons with Disabilities Act, 2016 assigns government establishments with duty to provide barrier free and conducive environment to divyang employees. Similarly, DoPT OM No. 36035/3/2013, dated 31.03.2014, provides in Para H that divyang employee must be given place of posting of choice. Guidelines and statute contain provisions for providing conducive environment to divyang employee. Objective behind these provisions is that services of divyang employees may be optimally utilised by enabling them to overcome natural barriers.
- v) Section 20(2) of RPwD Act, 2016 and Para H of DoPT OM are hereinafter produced :-
 "Section 20(2) - Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability."
 DoPT OM - "Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints. The practice of considering choice of place of posting in case of persons with disabilities may be continued."
- vi) Therefore, this court recommends that the Respondent shall transfer the Complainant to Chandigarh, his native place. Further if there is no vacancy in Chandigarh office, Respondent shall explore the possibility of mutual transfer.

7. This case is disposed off


 (Upma Srivastava)
 Commissioner for
 Persons with Disabilities

Dated: 12.08.2021