



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: 12822/1022/2021

Complainant : Shri Ravinder Jadhav
House no. 830, First Floor,
Sector 3, Huda Colony, Ballabgarh, — P3473
Faridabad, Haryana-121004
Mobile No: 08412821383
Email : decentravi94@gmail.com
ravinderj@canarabank.in

Respondent : The General Manager
Canara Bank-Head Office-HR Wing — P3474
112, J C Road, Bangalore,
Karnataka-560002
Phone No : 0522-2233063
Email : hoir@canarabank.com hohrms@canarabank.com
lkocadrecontrol@gmail.com

GIST OF COMPLAINT

The complainant Shri Ravinder Jadhav was selected in syndicate bank PO PGDBF 2018 batch. He completed his syndicate bank PGDBF course on 30th June 2019. He joined syndicate bank on 15.07.2019 as probationary officer (PO). He was posted in Uttawar branch (code 18234) from his joining date. From 01.04.2020, syndicate bank got merged / amalgamated in Canara Bank.

The complainant further stated that he is working as Assistant Manager, posted in Canara Bank Uttawar Branch. He is a person with Multiple Disability 71.60% with both hearing disability and visual disability.

The complainant further submitted that as per Syndicate bank & Canara Bank Equal Opportunity Policy he is entitled for posting near to his native place. The complainant has given many representation to his bank for change in posting but no action is taken, and hence this letter.

The complainant further stated that Uttawar branch is in Uttawar Village of Mewat District of Haryana at distance of 53 kms from his residence (Sector 3, Faridabad, Haryana). Uttawar area is inaccessible and not a barrier free environment for Persons with Disability. The complainant has to travel a total of 106 kms in a day after having multiple disabilities. He has to change four mode of transportation available and this also consumes 2.30 hrs for "one side" travelling and 5 hours total in a day apart from duty hours.

The complainant further stated that he send multiple representation to the bank regarding his issue and difficulty faced due to his posting at Uttawar branch. Even after so many representation on regular basis for 2 long years he have not even received a single reply or concern from their side. He also made personal visit to Regional Office at Faridabad for request of change in posting, but no action was taken.

The complainant has requested to CCPD Court to help him in getting posting near to his native place and identifying job roles and providing barrier free environment and accessible work station. He also further requested to instruct bank not to mark him on leave or loss of pay (LOP) till the matter is in court as he is facing more difficulties to get transportation facility post Covid to reach branch.

2. The matter was taken up with the Respondent vide letter dated 16.08.2021 under Section 75 of the RPwD Act, 2016.

3. In response, respondent General Manager, Canara Bank, Bangalore, vide letter dated 09.09.2021 submitted that the complainant joined the services of his erstwhile syndicate Bank on 15.07.2019 as Assistant Manager and was posted at Uttawar branch (DP Code-18234) in his native place i.e. Haryana in compliance with the guidelines issued by the govt regarding posting of Persons with Disabilities and taking into consideration the nature of work that can be assigned to the subject official. He is working at Uttawar branch since then onwards. In his complaint letter he has stated that he distance to the branch is more than 50 Kms from his residence which is located at Sector 3, Faridabad.


The respondent further stated that as a Scale Officer 1 he is eligible for accommodation at the place of his work and for reimbursement for the monthly rental expenses as per eligibility norms.

Further, the respondent submitted that COVID 19 Pandemic, Bank had extended work from home facility to Pregnant Women employees and Persons with Disabilities (Divyangjan Employees) including visually impaired respectively till 30.06.2021 in compliance with the Government Guidelines issued from time to time. The complainant was permitted work from home facility from 24.03.2020 till 28.02.2021 and again 17.04.2021 till 30.06.2021 during COVID 19 Pandemic as per the guidelines issued by Govt from time to time. However, the complainant did not report to duties after 30.06.2021 despite informing him that the bank had extended the facility only up to 30.06.2021 as per the bank head office circular no. 414/2021 dated 11.06.2021 issued in this regard.

The respondent further submitted that based on reporting received from branch, Regional office instructed the complainant to report back to duties immediately and it was also informed that his unauthorised absence w.e.f. 01.07.2021 will be treated as absence without leave/leave on loss of pay. However he has not joined duty till date and he has sent a mail on 31.08.2021 stated that he has undergone a major surgery in the month of July and that he will submit his medical certificate whenever he joins duty.

4. In response, the complainant Shri Ravinder Jadhav filed his rejoinder dated 28.09.2021 and submitted the following facts:

The complainant submit that Canara bank has issued letter dated 10.09.2021, for his relieving from Uttawar branch 18234 to Faridabad branch 2748. The complainant submit that It is a metro branch and he joined that branch on 13.09.2021 and also he is completely satisfied/comfortable with his current posting as Sector 9 branch is barrier free, completely Accessible Infrastructure, proper Transportation facility is available.



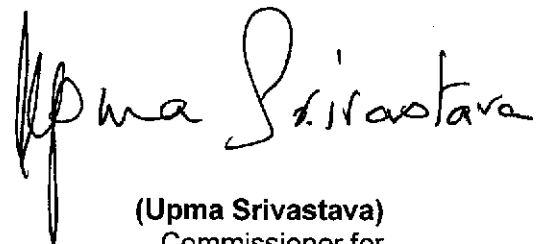
The complainant submitted that his posting matter now is resolved. But some other issues are pending with his case.

Observations /Recommendations:

i) The Court received a reply from the complainant dated 28th September 2021 whereby the complainant informed that Canara bank has issued his relieving letter on 10/09/2021, from Uttawar branch to Faridabad branch and he joined the new branch from 13/09/2021. The complainant informed that his posting matter is now resolved. But some other issues are pending i.e providing of accommodation/rental facility from bank, office equipments/ software etc.

ii) This Court's appreciates the sympathetic view taken by the respondent. However, this Court's recommends that respondent may also consider the other issues raised by the complainant in his rejoinder dated 28.09.2021. A copy of the rejoinder filed by the complainant is attached.

5. This case is disposed off



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.12.2021



extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

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भारत सरकार/Government of India

वाद संख्या - 8463/1143/2018

परिवादी -

श्री मोनू कुमार
पुत्र - स्वर्गीय पूरन सिंह,
निवासी - ग्राम नन्हेडा बक्काल भाउपुर,
जिला - सहारनपुर (उत्तर प्रदेश)
मोबाइल - 7830623168

— R30441

प्रतिवादी -

रेलवे बोर्ड,
(द्वारा - सचिव रेलवे बोर्ड),
रेल मंत्रालय, नई दिल्ली-110001

— R30442

1. परिवाद का सार -

श्री मोनू कुमार, 45% अस्थिबाधित दिव्यांग व्यक्ति ने भारतीय रेल से अपने पिता/मृतक रेलवे कर्मचारी के दिव्यांग आश्रित को पेंशन दिलाने का अनुरोध किया। परिवादी का कहना था कि उनके पिता की मृत्यु के पश्चात उनकी माता को रेलवे से पेंशन मिलती थी। अब उनकी माता का भी देहान्त दिनांक 07.01.2015 को हो गया, इसलिए उसे/दिव्यांग आश्रित को पेंशन दिलाने का अनुरोध किया।

2. प्रतिवादी का उत्तर -

उत्तर रेलवे, प्रधान कार्यालय, नई दिल्ली ने पत्र दिनांक 14.03.2018 के द्वारा यह सूचित किया है कि श्री मोनू कुमार के द्वारा पारिवारिक पेंशन के लिए प्रस्तुत किए गए अभ्यावेदन के साथ संलग्न दस्तावेजों में श्री मोनू कुमार की जन्म तिथि 10.12.1996 दर्शायी गई है जो 30.06.2015 को जारी किए गए थे। परन्तु श्री मोनू कुमार के पिताजी की मृत्यु के पश्चात इनकी माताजी द्वारा पारिवारिक पेंशन के लिए भरे गए प्रपत्रों में श्री मोनू कुमार की जन्म तिथि 10.12.1987 लिखी गई है। जिसके अनुसार श्री मोनू कुमार 25 वर्ष की आयु पूर्ण कर चुके हैं। अतः नियमानुसार श्री मोनू कुमार को पेंशन देय नहीं है।

(Page 1 of 3)

3. परिवारी का प्रत्युत्तर -

परिवारी ने अपना प्रत्युत्तर दिनांक 05.05.2018 प्रस्तुत कर कहा कि पिताजी जब रेलवे में कार्यरत थे तो अनुमान से उम्र लिखवा दिया था, उम्र का प्रमाण रेलवे में दर्ज नहीं है। परिवारी ने आधार कार्ड में उल्लिखित अपनी उम्र 22 वर्ष बताई और पेन्शन दिलाने का अनुरोध किया।

4. सुनवाई -

प्रतिवादी द्वारा प्रस्तुत उत्तर और परिवारी के अनुरोध पर इस प्रकरण में दिनांक 20.07.2018 को सुनवाई की गई। सुनवाई में निम्नलिखित व्यक्ति उपस्थित हुए -

- (1) श्री मोनू कुमार, प्रार्थी
- (2) श्री बलवान सिंह, एस.पी.ओ./आर.पी./मुख्यालय और श्री इन्दरवीर सिंह, ए.पी.ओ./मुरादाबाद प्रतिवादी की ओर से

5. अवलोकन/अनुशांसा

5.1 सुनवाई के दौरान प्रतिवादी पक्ष की ओर से उपस्थित प्रतिनिधि ने कहा कि रेलवे के अभिलेख के अनुसार प्रार्थी के पिता श्री पुरन सिंह ने अपने जीवनकाल में दिए घोषणा पत्र दिनांक 20.12.1991 में प्रार्थी की आयु 6 वर्ष दर्शाई है जिसके अनुसार प्रार्थी की जन्म तिथि 1986-87 के मध्य होनी चाहिए। जबकि प्रार्थी द्वारा प्रस्तुत विद्यालय के अभिलेख के अनुसार प्रार्थी की जन्म तिथि 10.12.1996 है। नियमानुसार पारिवारिक पेंशन 25 वर्ष की आयु तक ही देय है।

5.2 दिव्यांग आश्रित को पारिवारिक पेंशन दिए जाने के सम्बन्ध में प्रतिवादी की ओर से कहा गया कि प्रार्थी के मामले को मुख्य चिकित्सा अधिकार/मुरादाबाद मंडल को भेजा गया था जिन्होंने यह उल्लिखित किया कि प्रार्थी एक पैर वाले दिव्यांगता की श्रेणी में अपने जीविकोपार्जन हेतु सभी सरकारी/गैर सरकारी नौकरियों के लिए सक्षम है। रेलवे सर्विस पेन्शन मैनुअल के पैरा 75(d) के अनुसार केवल उन्हीं दिव्यांग आश्रित को जीवनपर्यन्त पारिवारिक पेन्शन देय है जो विकलांगता के कारण जीविकोपार्जन करने में अक्षम है और उसकी अक्षमता मण्डलीय चिकित्सा अधिकारी द्वारा प्रमाणित हो।

5.3 प्रार्थी ने कहा कि विकलांगता के कारण वे शारीरिक रूप से जीविकोपार्जन करने में अक्षम हैं तथा निवेदन किया कि अपने अक्षमता के सम्बन्ध में विकलांगता प्रमाण-पत्र प्रस्तुत करने के लिए समय दिया जाए।

5.4 प्रार्थी के निवेदन पर विचार करते हुए, कार्यवाही के अभिलेख दिनांक 25.07.2018 द्वारा, प्रार्थी को उनकी दिव्यांगता के कारण जीविकोपार्जन करने में उनकी अक्षमता के सम्बन्ध में प्रमाण-पत्र प्रस्तुत करने के लिए तीन माह का समय दिया गया।

5.5 निर्धारित समय बीत जाने के पश्चात भी जब प्रार्थी से वांछित प्रमाण-पत्र प्राप्त नहीं होने पर, इस न्यायालय द्वारा अनुस्मारक दिनांक 31.10.2018 और 26.07.2019 निर्गत कर प्रार्थी को वांछित प्रमाण-पत्र प्रस्तुत करने की सलाह दी गई, साथ ही यह भी सलाह दी गई कि विकलांगता के कारण जीविकोपार्जन करने में अक्षमता के सम्बन्ध में प्रमाण-पत्र प्रस्तुत न करने पर इस प्रकरण को बन्द समझा जाएगा।

5.6 तदुपरान्त, प्रार्थी ने दिनांक 19.09.2019 को कार्यालय मुख्य चिकित्सा अधिकारी, सहारनपुर द्वारा निर्गत एक दिव्यांगता प्रमाण-पत्र संख्या एम-1/38 दिनांकित 09.09.2019 प्रस्तुत किया जिसमें प्रार्थी की दिव्यांगता 55% दर्शाई गई थी, प्रस्तुत किया। किन्तु प्रार्थी ने अपनी विकलांगता के कारण जीविकोपार्जन करने में अक्षमता के सम्बन्ध में कोई प्रमाण-पत्र प्रस्तुत नहीं किया। तत्पश्चात, दिनांक 30.07.2020 को इस परिवाद को बन्द कर दिया गया।

5.7. प्रार्थी ने दिनांक 28.09.2021 को पुनः एक अभ्यावेदन प्रस्तुत किया यह कहते हुए कि पेंशन हेतु उन्होंने जो वाद इस न्यायालय में दायर किया था उसे अकारण ही बन्द कर दिया गया और इस विषय में उसे कोई सूचना नहीं दी गई और न ही कोई कारण बताया गया।

5.8 उपरोक्त विवरण/साक्ष्य से स्पष्ट है कि प्रार्थी/परिवादी को उनके विकलांगता के कारण जीविकोपार्जन करने में अक्षमता के सम्बन्ध में प्रमाण-पत्र प्रस्तुत करने के लिए इस न्यायालय द्वारा पर्याप्त समय दिया गया और सूचना भी दी गई, परन्तु प्रार्थी/परिवादी ने अभी तक वांछित प्रमाण-पत्र प्रस्तुत नहीं किया है। अतः इस प्रकरण में अग्रिम कार्यवाही अपेक्षित नहीं है।

5.9 इस प्रकरण को बन्द किया जाता है।

दिनांक – 02.12.2021

उपमा श्रीवास्तव

(उपमा श्रीवास्तव)
आयुक्त दिव्यांगजन



Extra

न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12799/1092/2021

Complainant:

Smt. Veena Wanchoo &
Shri Rajendra Wanchoo
R/o A-403, Samanvay Society,
Sector-56, Gurgram-122011 (Haryana)
Email: veenawahchoo@gmail.com
Mobile: 9899881090/9312873670

— P30443

Respondent:

Chairman & Managing Director,
Bharat Petroleum Corporation Ltd.,
Bharat Bhavan No. I & II, 4&6, Currimbhoy Road,
Ballard Estate, Mumbai – 400001
Email: cmd@bharatpetroleum.in

— P30444

1. Gist of Complaint:

Smt. Veena Wanchoo, a person with 40% Locomotor Disability, wife of Shri Rajendra Wanchoo, a person with 80% Locomotor Disability, filed a joint complaint dated 16.07.2021 regarding denial to award COCO Service Provider at BP Shantipath, New Delhi to them by Bharat Petroleum Corporation Ltd.

2. Submissions made by the Respondent

2.1 Respondent filed their reply dated 25.08.2021 and submitted that BP-Shantipath is a permanent Company owned and Company Operated (COCO) Retail Outlet and is running at Shantipath, District-New Delhi. The validity of agreement with the current Service Provider was currently under extension till 31.08.2021.

2.2 As per the Guidelines for Selection of Service Provider dated 16.03.2020, 75% of the permanent and temporary COCOs are to be separately earmarked for appointment of COCO Service Provider through advertisement. Earmarking is done through a transparent process of draw of lots on State/UT basis. For the balance 25% appointment of COCO Service Provider is done through

(Page 1 of 5)

nomination from DGR. Earmarking of the same is also done through a transparent process of draw of lot by Committee appointed at State Level. The subject COCO at BP Shantipath was part of 75% lot for which the service provider was to be selected through advertisement and was advertised by State Office on 04.02.2021.

2.3 There were 40 numbers of applications received, out of which 31 applicants were found ineligible on the ground of rectifiable deficiencies and one candidate was found ineligible due to non-rectifiable deficiencies; Mr. Rajendra Wanchoo was found ineligible as his age was more than 60 years at the time of application which falls under mandatory criteria/non-rectifiable deficiency. Notices were sent to the applicants (rectifiable deficiencies) for submission of required documents. Finally, 31 applicants appeared for interview; Smt. Veena Wanchoo was one among the 31 applicants who appeared for interview. After interview provisional merit panel was declared as under:-

Sl. No.	Name of applicant	Application No.	Total Marks scored (100)	Rank
1	Kuldeep	28	97.7	First
2	Sanya Dhir	11	97.3	Second
3	Manish Seth	9	96.7	Third

Smt. Veena Wanchoo could score 38.5 marks. She scored 0 marks out of 30 under 'Managerial experience of working in any sector'; and she scored 0 out of 25 under 'Capability to provide suitable manpower'.

2.4 Service providers are hired by BPCL to provide manpower and services for Fuel Dispensing and other related activities including day to day operation and maintenance at the COCO Retail Outlet and the selection criteria involves evaluation on parameters such as Entrepreneurial Capability, Managerial Experience of working in any sector, capability to provide suitable manpower, financial capability, etc. As per the Clause 8 of the guidelines, selection is to be done by inviting applications through capsule advertisements in two newspapers. In this case, since agreement with current Service Provider is expiring on 31.08.2021, capsule advertisement was done only for one COCO and in such case reservation in terms of Section 37 of the Rights of Persons with Disabilities Act, 2016, is not possible, as per the Judgment of Hon'ble High Court of Karnataka, Writ Petition No.1963 of 2018 – Karnataka Rajya Vikalchetnara Rakshana Samit Vs Indian Oil Corporation & Ors.

3. Submissions made in Rejoinder

3.1 Complainants filed their rejoinder vide email dated 31.08.2021 and submitted that the referred Judgment is neither relevant nor applicable, as it does not cover aspects of their case for the following reasons:

(i) In the referred Judgment the Petitioner was seeking extra reservation for PwDs on basis of Section 37, while the complainant is seeking reservation/benefits as provided in the RPwD Act, 2016.

(ii) In the referred Judgment, one vacancy was involved, while in instant case the capsule notification was for various openings in the State / UT of Haryana & Delhi, where reservation is possible.

(iii) In the Judgment Section 37 of RPwD Act, 2016 has not been found violative, but only extra reservation has not been allowed, which was never our request. The Judgment does not become applicable automatically unless one is party to the case, approved by GOI and included / clarified in the notification, which was not done. Moreover, any condition not incorporated in the Guidelines / Notification, cannot be relied subsequently, that BPCL has a separate stand for the dealership and now trying to seek excuse citing the Judgment.

3.2 BPCL has neither submitted any document equating LPG with Petrol Pump, nor does the Judgment and hence the two cannot be treated at par for denial of our rights. In view of the reasons as aforesaid, the process of BPCL not to provide reservation for the opening, is violative of the Act and fully discriminatory as envisaged in Section 3 of the RPwD Act, 2016 and therefore, the notification / advertisement / selection process is in complete violation of the law and needs to be quashed and appointment be terminated being violative of the said rule position.

3.3 The complainant, Smt. Veena Wanchoo was illegally / discriminatorily considered in General category despite submitting all the relevant documents and disability certificate the other disabled. Complainant, R. Wanchoo was not even called for interview, under the veil of Guidelines which are discriminatory and violative of the law.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **21.10.2021**. The following were present:

- (1) Complainants in person
- (2) Adv Praveen Singh; Naveen (DGM Legal); Shabir and Shitij (Territory Manager)



5. Observations & Recommendations:

5.1 Respondent is a company which is engaged in business of selling fuel like Petrol and diesel. Respondent owns certain outlets which are called COCO – Company Owned and Company Operated Retail Outlets. One such COCO is situated at Shantipath, New Delhi. Though COCO is owned by Respondent, it does not operate such outlets directly. Respondent operates such outlets through third parties which provide manpower to manage operations at such retail outlets.

5.2 Grievance of the Complainant is that the Respondent issued advertisement to invite applications from third parties willing to provide manpower to handle operations at COCO, Shantipath, New Delhi. Both the Complainants applied; however, their applications were rejected. Complainants claim that as per Section 37, Respondent is bound to give 5% reservation to PwD applicants in such schemes.

5.3 Respondent submitted that both the Complainants, namely, Shri Rajendra Wanchoo and his wife Veena Wanchoo had applied. Application of Shri Rajendra Wanchoo was rejected because his age was above 60 years and hence, he was not eligible to apply. Age criterion was clearly mentioned in the advertisement. Application of Smt. Veena Wanchoo was accepted along with other 39 applicants. She was called for interview. There were 3 parameters on which applicants were judged. First parameter was 'Document based Evaluation' of 45 marks; second parameter was 'Managerial Experience' of 30 marks and third one was 'Capability to provide Manpower' of 25 marks. Application of Smt. Veena Wanchoo was rejected because during interview she was awarded 0 marks for 'Managerial Experience' and 0 marks for 'Capability to Provide Manpower'. She was awarded 38.5 marks in 'Document based Evaluation'. Her total score was 38.5 out of 100. Scores of top three applicants were 97.7, 97.3 and 96.7 respectively. Under section 37 of RPwD Act, 2016, reservation is provided for poverty elevation schemes. This was not poverty elevation scheme hence no reservation was provided.

5.4 Section 37 of the Act is as under:-

"Section 37 – Special schemes and development programmes.

The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide,—

(a) five per cent. reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;

(b) five per cent. reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;

(c) five per cent. reservation in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.”

5.5 Section 37 talks about 5% reservation in – a) allotment of agricultural land and housing; b) poverty alleviation and developmental schemes and c) allotment of land when the land is to be used for promoting housing, occupation, business, enterprise.

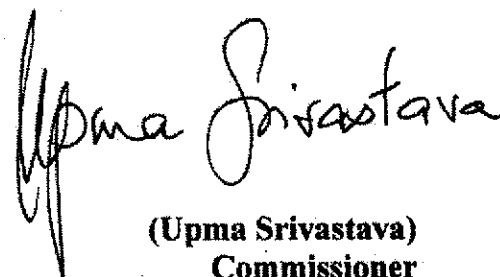
5.6 Impugned scheme of the Respondent establishment is certainly not an allotment of agricultural scheme. It is neither a poverty alleviation scheme. As far as third category of Section 37 is concerned, i.e. allotment of land for occupation and business, the scheme does not fall in that category either. Reason behind the same is that the scheme did not offer any land at concessional rates. It was merely an invitation to enter into a contract to provide manpower to operate a company owned fuel outlet. Scheme neither allotted land nor anything else was allotted at concessional rates.

5.7 Further during online hearing, Respondent apprised this court that there was no caste-based reservation as well.

5.8 Since there was no reservation on the basis of caste and the whole issue does not fall under ambits of Section 37 of Rights of Persons with Disabilities Act, 2016, this Court observes that no case of discrimination with Divyangjan is made out in the present Complaint. Further, intervention of this Court is not warranted.

5.9 Accordingly the case is disposed off.

Dated: 02.12.2021



**(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: 12774/1023/2021

Complainant: Shri Shekhar Singh
E-mail: <sspatel92@gmail.com>

— P30521

Respondent: The CMD
Vodafone Idea Ltd, Head Office
Suman Towers, Plot No. 18, Sector – 11
Gandhinagar – 382011

— P30522

Complainant: 75% locomotor disability

GIST of the Complaint:

Complainant vide complaint dated **27.06.2021** submitted that he was appointed as Manager (SME-VAS App) in Vodafone Idea Ltd, Yerwada, Pune on 26.01.2007. He further submitted that while on duty, he met with an accident on 13.02.2016 and became disabled person. He further submitted that he was forced by respondent for resignation, therefore, he resigned from services on 07.12.2020. Now, he has sought relief as (a) payment of fair compensation (b) release benefits under the Group Personal accident (c) correction in relieving letter (d) reinstating of complainant on Vodafone Idea payroll.

2. The matter was taken up with the Respondent vide letter dated **07.07.2021** under Section 75 of the RPwD Act, 2016.

3. In response, respondent vide letter dated 23.08.2021 inter-alia submitted that complainant's resignation dated 07.12.2020 was accepted by the Company and it paid to Shri Shekhar Singh Rs. 27,76,475. They further submitted that the Company also paid Rs. 97000/- for relocation to his home location i.e. Lucknow and Rs. 73163 as a onetime benefit for School fee payment of his children.

4. Complainant vide rejoinder dated 18.09.2021 reiterated his grievance.

Observation/Recommendations:

5. In light of the facts and material available on record, the reply of the respondent was found satisfactory. There is no evidence produced by the complainant regarding forced resignation. He ought to have represented at that point of time. Reinstatement after more than 06 months is not possible to be recommended especially in view of the fact that the company has paid all legitimate dues and this fact has not been denied by complainant. Hence, this Court concludes that intervention in this complaint is not warranted.

6. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 02.12.2021



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: 12830/1023/2021

Complainant: Shri Satyanarayan Telagar
S/o Balakrishna Telagar
Moulali Block, Mantur Road
Hubli – 580020
E-mail: <satytelagar@gmail.com>

— R30523

Respondent: The Chief Work Shop Manager
Carriage Repair Workshop
Personnel Branch, South Western Railway
Hubli – 580020
E-mail: <cwmubl@swr.railnet.gov.in>

— R30524

Complainant: 45% Locomotor Disability

GIST of the Complaint:

Complainant vide complaint dated **30.07.2021** submitted that Hon'ble High Court of Karnataka in W.P. No. 102063/2018 had passed an order dated 31.03.2021 with the direction to the respondent to grant him secondary family pension and settle the issue within 06 weeks but respondent has not sanctioned the pension.

2. The matter was taken up with the Respondent vide letter dated **17.08.2021** under Section 75 of the RPwD Act, 2016.

3. In response, respondent vide letter dated **13.09.2021** inter-alia submitted that after Hon'ble High Court directions, the complainant was directed to appear before Railway Medical Authority of Central Hospital, Hubli for medical examination before allowing family pension. Based on the medical report, the competent appointing authority has decided that complainant is not eligible for sanction of secondary pension since he is able to earn his livelihood.

4. Complainant vide rejoinder dated 17.09.2021 submitted that he is not satisfied with the reply of the respondent and he alleged that Railway had no authority either to issue disability or to give any opinion.

5. After considering the respondent's reply dated **13.09.2021** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **09.11.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.11.2021**. The following were present:

- Shri Satyanarayan Telagar – complainant
- Adv. Monika Sharma on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant seeks family pension on the ground of disability. Complainant submits that his father was the employee of the Respondent establishment. He retired in year 1991 and died in year 2010. After his death family pension was issued in favour of employee's wife, i.e. Complainant's mother. Complainant's mother died on 19.10.2017. Complainant alleged that he filed case in Karnataka High Court. Hon'ble court Ordered the Respondent to grant pension to the Complainant. Respondent did not grant family pension but referred the matter to the authority which certified the Complainant as 'able to earn livelihood'.

8. Respondent submits that Karnataka High Court Ordered to grant pension to the Complainant 'in accordance with the rules and regulations issued by Government of India'. After receiving the Order the issue was referred to the competent authority which declared the Complainant as 'able to earn livelihood' hence pension was not granted in his favour.




9. This Court had an opportunity to peruse the Order of Hon'ble Karnataka High Court. Main issue before the High Court was whether the Petitioner (Complainant in this Complaint) is son of the deceased employee. High Court decided this issue in favour of the Complainant. Family Pension was not the issue, before the High Court. Moreover, Court also Ordered to issue family pension in accordance with the rules on this issue. Court nowhere Ordered to bypass the rules relating to family pension.

10. As far as rules of Government of India is concerned, it is settled position that 'not ability to earn livelihood' is the essential criterion to issue family pension. Hence, Respondent rightly referred the Complainant case to the medical authority to evaluate ability to earn livelihood. Medical Authority declared the Complainant as able to earn livelihood. Criterion adopted by medical authority was in view of nature and percentage of disability.

11. Hence, this Court concludes that the Complainant has no case of discrimination on the ground of disability. Intervention of this Court is not warranted.

12. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 03.12.2021



सत्यमेव जयते

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

भारत सरकार/Government of India

Case No: 12802/1023/2021

Complainant: Smt. Neelam Dubey
W/o Vinod Kumar Dubey
E-mail: <vinoddubey1988@gmail.com>

— 1230522

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

— 1230528

Complainant: Shri Vinod Kumar Dubey, 50% locomotor disability

GIST of the Complaint:

प्रार्थी श्री नीलम दूबे का अपनी शिकायत दिनांक 05.07.2021 में कहना है कि उनके पति श्री विनोद कुमार दूबे केन्द्रीय विद्यालय एएमसी, लखनऊ में पुस्तकालयाध्यक्ष के पद पर कार्यरत हैं तथा उनको मानसिक व आर्थिक रूप से प्रताड़ित किया जा रहा है विवरण निम्नलिखित है:

- श्री विनोद कुमार दूबे को केन्द्रीय विद्यालय संगठन द्वारा पुस्तकालयाध्यक्ष का वरिष्ठ वेतनमान दिनांक 05.11.2000 को दिया गया और चयनित वेतनमान 05.11.2012 से देय है तथा अखिल भारतीय वरिष्ठता सूची 01.01.2018 के अनुसार वरिष्ठता संख्या 145 है परन्तु अभी तक चयनित वेतनमान नहीं दिया गया।
- यात्रा भत्ता बिल पर विद्यालय के प्राचार्य व उच्च श्रेणी के संकेत पर आडिट करवा कर कटौती करना।
- सूचना के अधिकार 2005 के अन्तर्गत मांगी गई जानकारी न देना।

2. The matter was taken up with the Respondent vide letter dated 28.07.2021 under Section 75 of the RPwD Act, 2016.

3. सहायक आयुक्त (स्था.), केन्द्रीय विद्यालय संगठन, नई दिल्ली का अपने पत्र दिनांक 06.09.2021 में कहना है कि यात्रा भत्ता बिल पर अंकेक्षण दल द्वारा आपत्ति उपरांत ऑडिट

रिकवरी नियमानुसार की गई है तथा सूचना के अधिकार 2005 के अंतर्गत मांगी गई जानकारी ऑनलाइन एवं त्वरित डाक द्वारा समय पर भेजी जा चुकी है। चयनित वेतनमान न दिए जाने के संबंध में कहना है कि *"In KVS, Selection Grade is granted to 20% of the Senior Scale. In the year 2020, the Selection Scale upto Seniority No. 118 has already been granted and as per Seniority List of Librarian (01.01.2018), the Seniority No. of Shri Vinod Kumar Dubey is 145. His will be placed before the next DPC with other candidates as per eligibility for granting of Selection Scale."*

4. Reply of the respondent was sent to the complainant through e-mail dated **14.09.2021** for submission of his/her comments/rejoinder but till date no response has been received

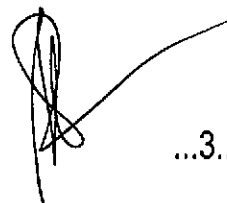
5. After considering the respondent's reply dated **06.09.2021** and the complainant's complaint, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **26.10.2021** but due to administrative exigencies hearing re-scheduled on **28.10.2021**.

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

- Smt. Neelam Dubey – complainant
- Shri Anurag Bhatnagar, Asstt. Commissioner on behalf of respondent

Observations & Recommendations

5. Two grievances filed by the Complainant relate to fixation of salary and non-payment of Travel Allowance. Complainant submits that Selection scale was granted on 05.11.2000. Selection scale was due in year 2012 but not granted till date. As on 01.01.2018, he is placed on Sr. No. 145 in Seniority List. Further Complainant submits that whenever the Complainant travelled out of station on official duty, his TA was either not paid or partially paid.



6. Respondent submits that in year 2020, Selection Scale was paid to employees placed till Seniority List No. 118. In year 2021 Respondent has decided to grant Selection Scale to all employees placed till Sr. No. 210. Complainant is placed at Sr. No. 145. Further Respondent apprised this Court during online hearing that in each cadre Selection grade is granted to 20% employees. The decision is taken by DPC on the basis of ACR, Principal Reports and placement in seniority list. Respondent further submitted during online hearing that for year 2021, DPC is yet to take decision and name of the Complainant shall be forwarded to the DPC whenever it will be constituted for the purpose.

7. On the issue of Selection Scale, this Court concludes that discrimination on the basis of disability is not made out in the present Complaint. Hence intervention of this Court in this issue is not warranted.

8. With respect to payment of Travel Allowance, Complainant has not pointed towards any particular instance. This Court recommends that the Respondent shall check its own records and shall find if any discrimination is caused to the Complainant on the basis of disability.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 03.12.2021



सत्यमेव जयते

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: 12849/1023/2021

Complainant: Shri A.M. Malwat
Chief Office Superintendent
Working Under DRM (G)
Divisional Railway Manager's Office
Ahmedabad, Western Railway
E-mail: <armalwat@gmail.com>

— R30525

Respondent: The Divisional Railway Manager
Divisional Railway Manager's Office
Western Railway, Ahmedabad
e-mail: <srdm.adi@wr.railnet.gov.in>
<srdcm.adi@wr.railnet.gov.in>

— R30526

Complainant: 40% locomotor disability

GIST of the Complaint:

Complainant Shri A.M. Malwat, Chief Office Superintendent vide complaint dated **09.08.2021** submitted that he met with a road accident on 30.09.2011 and got permanent disability certificate dated 16.10.2012 from Govt. Civil Hospital, Ahmedabad . He further submitted that on 18.10.2012, he had applied to DRM (Estt) to provide all admissible benefits under PwD quota and after long period, he was directed to appear before Chief Medical Superintendent Ahmedabad to verify disability and after examination, he found more than 40% disability on 16.12.2014. He alleged that he had submitted application on 18.10.2012 but his double transportation allowance started w.e.f. 16.12.2014.

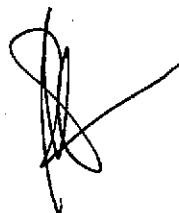
2. The matter was taken up with the Respondent vide letter dated **26.08.2021** under Section 75 of the RPwD Act, 2016. But despite reminders dated **13.09.2021** & **28.09.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **09.11.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.11.2021**. The following were present:

- Shri A.M. Malwat - Complainant
- Sri Kamlesh Kumar Bhat, Regional Manager on behalf of respondent

Observation/Recommendations:

3. Both the parties were heard.
4. Complainant submits that he acquired disability in year 2011. Disability Certificate was issued on 16.10.2012. He applied for disability benefits on 18.10.2012. Respondent referred his case to Chief Medical Superintendent on 16.12.2014. Respondent approved to grant conveyance allowance/transport allowance from 16.12.2014. Relief sought by the Complainant is that he wants his benefits to be issued from the date of disability certificate.
5. Relevant O.M. on this issue is O.M. No. 19029/1/78 dated 31.08.1978 issued by Ministry of Finance. This O.M. lays down that head of department shall refer the case to medical authority for obtaining recommendation on the issue of grant of conveyance allowance and such conveyance allowance be issued from the date on which recommendations of medical authorities is received.
6. As per the O.M. there is no illegality on the part of the Respondent. However, what astonishes the court is inordinate delay of 2 years in referring the case of the Complainant to medical authorities it is not explained by the Respondent that why the Complainant's case was referred to medical authority after expiry of 2 long years.
7. During online hearing Respondent was asked to explain the cause of 2 years delay. Respondent completely failed to provide any explanation. Relevant O.M. dated 31.08.1978 does not provide any time limit for referring the case to medical authorities. However, this does not imply that unreasonable delay will be caused by the government establishment in performing their duties.



....3.....

8. This court concludes that unexplained delay of 2 years in referring the case of the Complainant to medical authority is discrimination with the Complainant. this court recommends that the Respondent shall grant the Conveyance Allowance to the Complainant from the date on which he applied for the Conveyance Allowance.

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

10. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 03.12.2021



सत्यमेव जयते

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: 12848/1023/2021

Complainant: Smt. Nanda Rawat
434, Yamunapuram, Bulandshahr, Uttar Pradesh
E-mail: <nandarawat7060@gmail.com>

— R30531

Respondent: The Assistant General Manager
Punjab National Bank
HRD Section, Circle Office
Yamunapuram, Bulandshahr, Uttar Pradesh
e-mail: <cobsrhrd@pnb.co.in>

— R30532

Complainant: 100% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **18.08.2021** submitted that she is working in Punjab National Bank, Yamunapuram branch and after Covid-19 period without any order she has been transferred at Civil Lines Branch which not suitable for her. She has requested to either retain her at Yamunapuram Branch or transfer her to nearest branch i.e. Circle Office, Yamunapuram, Bulandshahr.

2. The matter was taken up with the Respondent vide letter dated **26.08.2021** under Section 75 of the RPwD Act, 2016. But despite reminders dated **13.09.2021** & **29.09.2021**, no response has been received from the respondent. Therefore, hearing scheduled on **09.11.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **09.11.2021**. The following were present:

- Complainant - absent
- Shri Vaibhav Aggarwal, Sr. Manager on behalf of respondent

Observation/Recommendations:

- 3 Complainant submits that she was earlier posted in Yamunapuram. Later she was transferred to Civil Lines branch during Covid lockdown. Complainant has sought relief for retention in Yamunapuram branch or near to Yamunapuram.
4. Complainant did not join the online hearing. Respondent apprised the Court that the grievance of the Complainant has been taken care of. Complainant was transferred to Yamunapuram branch on 25.08.2021.
5. Since the grievance of the Complainant has been taken care of hence intervention of this Court is not warranted.
6. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 03.12.2021



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: 12805/1023/2021

Complainant: Shri Pramod Kumar Singh
E-mail: <singhpk567@gmail.com>

— P30529

Respondent: The Chairman
Baroda U.P. Bank
Budh Vihar Commerical Scheme
Taramandal, Gorakhpur – 273016
E-mail: <hrm.ho@barodauprrb.co.in>

— P30530

Complainant: 60% Locomotor Disability

GIST of the Complaint:

Complainant vide complaint dated **30.06.2021** submitted that he was retired from Baroda UP Bank on 31.07.2017 as a Sr. Manager and before retirement, Shri D.P. Mishra, Chairman had issued Memorandum dated 10.07.2017 to him and second letter dated 13.07.2017 was also issued for withholding some financial benefits. He alleged that reply was submitted by him timely but his gratuity was not released till the closing enquiry, after closing of enquiry, his loan a/c 541406/189 was forcibly closed from gratuity amount without informing him, didn't pay the interest on PF owing to undue delay, didn't consider pending T.E. bills, didn't consider proposal for retirees medical insurance scheme etc.

2. The matter was taken up with the Respondent vide letter dated **10.08.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **08.09.2021** inter-alia submitted that disciplinary proceedings were instituted against Shri Pramod Kumar Singh well before his date of retirement and all the terminal benefits such as Gratuity, Leave encashment, PF, Pension etc were released on conclusion of disciplinary proceedings. They further submitted that premium of medical insurance scheme for retired staff members are borne by the staff members themselves and bank's role is limited to a facilitator only.

4. After considering the respondent's reply dated **08.09.2021** and the complainant's letter dated **03.10.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **23.11.2021** but due to administrative exigencies hearing re-scheduled on **25.11.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **25.11.2021**. The following were present:

- Shri Pramod Kumar Singh – complainant
- Arun Kumar Tripathi, Chief Manager (HR) on behalf of respondent

Observation/Recommendations:


5. Both the parties were heard.
6. Complainant is retired employee. Grievance of the Complainant is against one Mr. D.P. Gupta. Complainant submits that DP Gupta issued memorandum only 20 days before Complainant's retirement. Ultimately after approximately 120 days enquiry was concluded. Till the conclusion of the enquiry his retirement benefits like gratuity, PF amount were withheld. Complainant submits that he is entitled for interest on PF and gratuity for undue delay caused in releasing gratuity and PF amount. Complainant further submits that he submitted TE Bills for expenses which he incurred in order to attend enquiry proceedings. The Bills were not cleared.
7. Respondent submits that Disciplinary proceedings were instituted against the Complainant. Complainant's retirement benefits such as Gratuity, Leave Encashment, PF, Pension etc. were withheld as per rules and regulations. All these benefits were released immediately on the conclusion of the Disciplinary Proceedings. Respondent has paid gratuity to the Complainant within 30 days of conclusion of the proceedings. TE bills were not cleared because as per the rules such bills have to be submitted within 30 days of such journey. Complainant did not submit the bills within the stipulated time.



8. During online hearing the Respondent further apprised this Court that the chargesheet was also served to the Complainant and the Complainant never questioned the validity of the disciplinary proceedings. Complainant did not present, before the Court, any rule position to support his claim of interest. Hence intervention of this Court in the issue of claim of interest is not warranted.

9. As far as issue of Travel Expenses is concerned, this Court recommends that the Respondent may adopt sympathetic approach and settle the bills which were submitted even after expiry of stipulated time. Complainant may re-submit the bills to the Respondent.

10. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 03.12.2021



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: 12857/1023/2021

Complainant: Shri Rin Suresh

Safaiwala MES 614654

Garrison Engineer (Army), Thirumala Post

Trivandrum - 695006

Respondent: The Administrative Officer

Garrison Engineer (Army)

Thirumala Post, Trivandrum - 695006

E-mail: <ceengrpl-mes@nic.in>

Complainant: 40% visual impairment

GIST of the Complaint:

Complainant vide complaint dated **20.08.2021** submitted that he was appointed as Multi Tasking Staff (MTS) at CME, Pune under PwD quota on 29.04.2013 and transferred on 17.11.2015 to Garrison Engineer (Army), Trivandrum as Safaiwala. He further submitted that now, he is suffering from suffocation and breathing difficulties, therefore, he has requested to change existing trade into MATE (semiskill) or MATE in any category at same station as MATE and Safaiwala are pay matrix level 01 category.

2. The matter was taken up with the Respondent vide letter dated **07.09.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **01.10.2021** inter-alia submitted that they are not the Competent authority, empowered to make change/conversion from one category to another category i.e. Safaiwala (Basic Category) to Mate (Industrial category), which is a downgrading category. However, being a pure policy matter, they have requested to higher authorities for necessary clarification and further course of action to be taken in this regard.

4. Complainant vide rejoinder dated **20.10.2021** reiterated his grievance and submitted that both the posts Safaiwala and MATE are coming under the same scale of pay.

5. After considering the respondent's reply dated **01.10.2021** and the complainant's rejoinder dated **20.10.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **23.11.2021** but due to administrative exigencies hearing re-scheduled on **25.11.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **25.11.2021**. The following were present:

- Shri Vineeth Kumar, Advocate & Shri Rin Suresh – complainant
- None appeared on behalf of respondent

Observation/Recommendations:

6. Complainant submits that he was appointed on 29.04.2013 in Pune. On 17.11.2015 he was transferred to Trivandrum as Safaiwala. Complainant submits that because of nature of his disability he cannot perform duties of 'Safaiwala'. He has sought relief from this court to change his existing trade of 'Safaiwala' to 'MATE'.

7. Respondent submits that 'Safaiwala' post falls under 'Basic Category' whereas 'Mate' falls under 'Industrial category'. Such change will amount to downgrading of category. No policy exists to downgrade the category of the employees. The case of the Complainant has been forwarded to the competent authorities for appropriate decision.

8. During online hearing this Court enquired from the Complainant as to why he wants his post to be downgraded. Complainant informed that in addition to disability he suffers from bronchitis and hence it is not possible for him to perform the job of 'safaiwala'. Further the Complainant submitted that even if the change of category would amount to downgrading, he will have no Complaints in being downgraded.



9. The issue which is indispensable to be addressed is that 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.

10. 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."

11. 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.

12. 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.

13. Applying the principle of Reasonable Accommodation in the present case this Court recommends that the Respondent shall assign only such duties to the Complainant which are compatible with the nature of disability of the Complainant.

14. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 03.12.2021



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: 12804/1023/2021

Complainant: Shri Shishir Kumar Mishra
H.No. 02, Jemini Park Extn. South West Delhi
New Delhi – 110043
E-mail: <shishir2mishra@gmail.com>

— 1230535

Respondent: The General Manager
IDBI Bank, 51/3, Desh Bandhu Gupta Road
Karol Bagh (Opp. Khalsa College), New Delhi – 110005
E-mail: <ps.dubey@idbi.co.in>

— 1230536

Complainant: 46% Locomotor Disability

GIST of the Complaint:

Complainant Shri Shishir Kumar Mishra, Assistant Manager, an employee of IDBI Bank, posted at Sahibabad Branch, Ghaziabad vide complaint dated 16.07.2021 inter-alia submitted that during the first Covid-19 pandemic, he was unable to attend office due to various restriction imposed, therefore, he had requested for work from home but same was rejected and not given salary in the month of July 2020. He has requested to (i) Grant Special Leave from 25th March 2020 to 31.07.2020 (ii) restoration of his approved leave for the period of 20.03.2020 to 24.03.2020 (iii) release salary for the month of July 2020 and 1st, 2nd and 3rd August 2020. (iv) posting in nearest RO/ZO Delhi/NCR and Rajbhasha Dept. (Delhi) which is nearest to his relocated residence.

2. The matter was taken up with the Respondent vide letter dated 28.07.2021 under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated 04.09.2021 inter-alia submitted that Bank is neither a Government company in terms of the definition of the "Government Company" of the companies Act, 2013 nor a "Government establishment" as provided in the definition of the

Disabilities Act, the compliance under Section 23 is not applicable to the Bank, however, Bank is maintaining reservation roster for PwDs and providing certain facilities like aids/assistive devices, accessibility and barrier free environment at workplace preference in accommodation, special causal leave etc. They further submitted that as per revised Bank guidelines dated 02.06.2020 "*Differently abled employees who are wheel chair bound or visually impaired who need special assistance for their movement or have to necessary use touch for navigating must be mandatorily advised to work from home*". The salary of Shri Shishir Kumar was stop as he neither resumed duties nor submitted requested medical records to Bank and regarding work from home, he is neither wheel chair bound nor uses crutches.

4. After considering the respondent's reply dated **04.09.2021** 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 **02.11.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **02.11.2021**. The following were present:

- Shri Shishir Kumar Mishra – complainant
- Shri Amit, Zonal Manager on behalf of respondent

Observation/Recommendations:

5. Both the parties were heard.

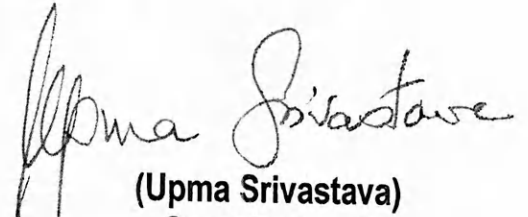
6. Complainant is presently holding the post of Assistant Manager. He submits that he was not able to attend office due to Covid 19 restrictions. Because of his inability to attend during Covid period, salary of April, May and June of year 2020 was credited but was marked as 'lien'. Salary for July was not credited.

7. During online hearing Respondent apprised this Court that all the grievances of the Complainant have been taken care of. Complainant's absence has been considered as 'Work from Home'. All the technical aspects of the issue have been resolved.



8. Since the issue has already been resolved, hence intervention of this Court is not warranted.

9. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 03.12.2021



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

भारत सरकार/Government of India

Case No: 12806/1023/2021

Complainant: Shri Virender Singh Rawat
E-mail: <virenderarawat1@gmail.com>

— 230537

Respondent: The Chairman-cum-Managing Director
NBCC (INDIA) Ltd
NBCC Bhawan, Lodhi Road, New Delhi – 110003
E-mail: <ajaypanday@nbccindia.com>

— 230538

Complainant: 50% Locomotor Disability

GIST of the Complaint:

Complainant vide complaint dated **15.07.2021** submitted that he had worked with NBCC (INDIA) Ltd as a Junior Engineer (Mechanical) from 20.09.2011 to 31.03.2021 and Shri Ravinder Kumar, Spe Electrical is also working since 2011 in respondent organization. He further submitted that respondent has advertised walk in Interview bases backlog vacancies for PwD as per experience bases and considered the candidature of Shri Ravinder Kumar. He alleged that respondent has not advertised walk in interview basis vacancy of Jr. Engineer (Mechanical).

2. The matter was taken up with the Respondent vide letter dated **02.08.2021** under Section 75 of the RPwD Act, 2016.

3. Respondent vide letter dated **30.09.2021** inter-alia submitted that as per existing Guidelines and Standard Terms & Conditions for appointment of an employee on contract basis, the maximum period of engagement for a contract employee is three years. The complainant was initially joined as Jr. Engineer (Mechanical) on contract basis on

30.09.2011 and he was re-appointed for more than three years as a special case from time to time on humanitarian ground with the approval of Competent Authority. They further submitted that NBCC vide Advertisement No. 07/18 sought the candidature of employees for recruitment of JE (Mech) i.e. Group 'C' post on regular rolls wherein complainant submitted his candidature but could not find a place in the merit of written test even with the relaxed standards for PwD candidates and hence could not be inducted on the regular rolls of the respondent Company.

4. Complainant vide rejoinder dated **18.10.2021** reiterated his grievance and submitted that Advertisement No. 07/18 was created for him but he could not apply due to less percentage of marks i.e. 58% and he was not provided relaxation in marks.

5. After considering the respondent's reply dated **30.09.2021** and the complainant's letter dated **18.10.2021**, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **23.11.2021** but due to administrative exigencies hearing re-scheduled on **25.11.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **25.11.2021**. The following were present:

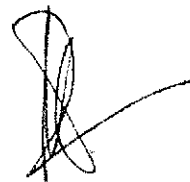
- Shri Virender Singh Rawat – complainant
- Shri Ajay Pandey, Manager (Law) on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant joined Respondent establishment as Junior Engineer on contract basis on 08.09.2011. His contract was extended till 31.03.2020. Thereafter the contract of the Complainant was terminated. Relief sought by the Complainant is regularisation of his job.

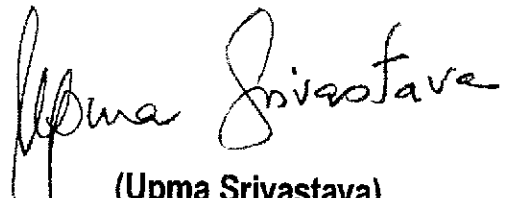
8. Respondent advertised the post of Junior Engineer to fill up the post with regular employee. Complainant could not apply against the advertisement because he could not meet the minimum eligibility criterion.



9. During online hearing the Respondent further apprised this Court that against the post, a divyang candidate of Orthopedically Handicapped category was appointed.

10. It is settled position of law that a candidate cannot claim regularisation of his job on the ground of working on contract for long period of time. This Court cannot compel the Respondent to appoint the Complainant while terminating job of another divyang candidate already appointed against the post. Intervention of this Court in the present Complaint is not warranted.

11. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 03.12.2021



सत्यमेव जयते

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

भारत सरकार/Government of India

Case No: 12815/1021/2021

Complainant: Shri Ajay Kumar Pandey
Quarter No. 19/A, Street No. 78
Simjuri, Chitranjan, West Bengal
E-mail: <aprohitraj220@gmail.com>

— 1230539

Respondent: The General Manager
Chittaranjan Locomotive Works
P.O. Chittaranjan, Dist. Burdwan, West Bengal – 713331
E-mail: <cpo@clw.railnet.gov.in>

— 1230540

Complainant: 40% locomotor disability

GIST of the Complaint:

प्रार्थी श्री अजय कुमार पाण्डेय, यार्ड पोर्टर (Yard Porter) का अपनी शिकायत दिनांक 19.07.2021 में कहना है कि अप्रैल 2014 में उन्होंने Mechanical Helper-II पद से रेलवे में सेवा शुरू की तथा दिनांक 08.04.2019 को सीनियर यार्ड पोर्टर (Sr. Yard Porter) के पद पर पदोन्नती मिली। प्रार्थी का आगे कहना है कि दिनांक 20.08.2019 को Shunting Master Gr. II (Grade Pay 2400) पद के लिए उन्होंने आवेदन किया और चयनीत हुआ तथा निर्देशानुसार चिकित्सकिय जाँच भी हुई परन्तु पद ग्रहण नहीं कर सके चूँकि निचले ग्रेड में दो वर्ष का कार्यकाल पूरा नहीं था।

2. The matter was taken up with the Respondent vide letter dated 03.08.2021 under Section 75 of the RPwD Act, 2016.

3. In response, respondent vide letter dated 28.08.2021 inter-alia submitted that promotion to next higher grade can be granted only when staff has completed two years of tenure in lower grade and after completion of residency period of 02 years Shri Pandey will get next promotion w.e.f. 22.06.2022 maintaining their initial seniority of yard cadre.

4. प्रार्थी का अपने प्रति उत्तर दिनांक 06.09.2021 में कहना है कि उन्हें पहली पदोन्नति दिनांक 08.04.2019 को प्राप्त हुई तथा दूसरी पदोन्नति के लिए वह दिनांक 08.04.2021 में योग्य है। प्रार्थी का आगे कहना है कि महाप्रबंधक के अनुमोदन पर कर्मचारियों को बिना 02 वर्ष पूरा किये भी पदोन्नति किया जा सके ऐसा निर्देश है।

5. After considering the respondent's reply dated 28.08.2021 and the complainant's rejoinder dated 06.09.2021, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on 09.11.2021.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 09.11.2021. The following were present:

- Shri Ajay Kumar Pandey – complainant
- Sri Ashish Sachan, Dy. CPO (W) on behalf of respondent

Observation/Recommendations:

6. Both the parties were heard.

7. Complainant submits that he was appointed in year 2014 on the post of Mechanical Helper -II (Grade Pay - 1800). Subsequently he was promoted in 2020 to the post of Senior Yard Porter (Grade Pay – 1900). Complainant's grievance is that two other employees who are junior to the Complainant were promoted to the same post in year 2018. Complainant applied for promotion to the post of Shunting Master - II (Grade Pay – 2400) but was denied promotion because he did not complete eligibility criterion of minimum 2 years' experience in Grade Pay of 1900. In the present Complaint, relief sought by the Complainant is promotion on the ground that he was eligible for promotion in year 2018 instead of 2020, when two other employees who were junior to him were promoted.

8. Respondent submits that the Complainant joined in year 2014 on the post of Mechanical Helper and is currently posted as Senior Yard Porter. Other two employees were promoted on the same post before the Complainant based upon their seniority. Seniority is counted on the basis of joining in Group D. Other two employees namely




Sri Bijoy Bouri joined year 1990 and another one Sri Shravan Kumar joined in year 2013. Both these employees were senior to the Complainant and hence were promoted before the Complainant. Minimum eligibility for promotion to the post of Shunting Master – II is two years' service in Grade Pay 1900. Since the Complainant was promoted in Grade Pay 1900 in year 2020 hence, he will be eligible for promotion to Shunting Master on 22.06.2022.

9. During online hearing Respondent further apprised this Court that no employee who was appointed after the Complainant's appointment on the post of Mechanical Helper -II has been promoted.

10. This Court finds no discrimination on the basis of disability. Intervention of this Court in the present Complaint is not warranted.

11. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 03.12.2021



सत्यमेव जयते

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: 12640/1022/2021

Complainant : S. Droupathy Antherjanam
101, NCC Nagar,
Peroorkada, Thiruvananthapuram-695005
Email : sagarathimon@gmail.com
Mobile No : 09447500534

— R30547

Respondent : ☒ The Director General (N&CA)
Doordarshan Bhawan II
Copernicus Marg, New Delhi-110001

— R30548

The Dy. Director (News)
Regional News Unit
Doordarshan Kendra
Thiruvananthapuram-695005
Email : rnuddktvpm@gmail.com

— R30549

GIST OF COMPLAINT

The complainant S. Droupathy Antherjanam submitted that his son Shri K. Anoop Sagar, was working as News Editor at Doordarshan Kendra Thiruvananthapuram. He joined as News Editor at Doordarshan Kendra Thiruvananthapuram in August 2018 as per Ministry of Information and broadcasting order. The complainant further submitted that in November 2019 he was transferred to RNI, New Delhi while he was sole caregiver to his father also disregarding his request not to transfer him due to his father's health condition.

The complainant further submitted that they approached Hon'ble CAT Ernakulam bench and Hon'ble High Court of Kerala against transfer order considering health condition of his father. Both the Courts instructed the Ministry of Information and Broadcasting to consider his representation as he is sole caregiver to his father on his joining the new posting at RNI New Delhi.

The Hon'ble High Court direction was to consider the request within two months of his joining in RNI. But the Ministry of Information and Broadcasting turned down the representation of his son even after Court directions citing silly reasons when the Ministry has posted several persons in Kerala for more than 10 years and also posted people without any post flouting all transfer norms besides his son has not been paid any salary for last one year from date of his transfer, this is done only to harass him and his father who is a disabled person with locomotor disability certified by the State medical board as a person with specified disability.

The complainant is at the age of 67 years undergoing treatment for heart disease, cervical disc Poland carpal tunnel syndrome. His son is the only caregiver and breadwinner and we are dependent on him for treatment and medical expenses. The complainant is requested to CCPD Court may intervene and issue directions to the Ministry of Information and Broadcasting for posting him in Trivandrum and also payment of salary for the treatment of his father.

[Signature]

2. The matter was taken up with the Respondent vide letter dated 4.3.2021 under Section 75 of the RPwD Act, 2016.

3. In response, respondent, section officer, Ministry of Information and Broadcasting vide letter dated 06.04.2021 submitted that Shri K. Anoop Sagar, son of the complainant is a senior grade officer of Indian Information Service Group 'B'. He was posted as News Editor, Regional News Unit, DDK, Thiruvananthapuram since August, 2018. They further stated that prior to posting at DDK, Thiruvananthapuram, he remained posted at DFP, Kannur (Kerala) from October, 2015.

The respondent further submitted that the complainant son was transferred from DDK, Thiruvananthapuram and posted as Registration Supervisor, RNI, New Delhi (on the strength of PIB, New Delhi) vide order no. 120/2019-IIS dated 25.11.2019. He was relieved from DDK Thiruvananthapuram on 26.11.2019.

The respondent further submitted that IIS officers have all India transfer liability and their postings/transfers are done/decided by the competent authority on the recommendations of the duly constituted Civil Service Board (CSB). The CSB recommends postings/transfers of IIS officers on the basis of functional requirements of the services and also requirement of officers in various media units of this Ministry spread all over India.

The transfer of Shri Anoop K Anoop Sagar from DDK, Thiruvananthapuram to RNI, New Delhi was done by the competent authority on the recommendations of the CSB and on urgent functional requirement of RNI, New Delhi.

The respondent further submitted that instead of joining at RNI, New Delhi, Shri K Anoop Sagar had filed an OA No. 844/2019 in Hon'ble Central Administrative Tribunal, Ernakulam Bench, even without submitting any representation to this Ministry regarding such transfer. He had filed the OA on the basis of apprehensions making false averments of malafide intentions against his own superiors. After taking into consideration all facts and circumstances of the case, the OA No. 844/2019 was disposed by the Hon'ble CAT, Ernakulam Bench by its order dated 2nd November, 2020. In the order, the CAT has held that "there is nothing to interfere with the transfer order and further with the relieving order" (which was passed by the Ministry on 26.11.2019). Shri K. Anoop Sagar was also directed by the CAT, Ernakulam Bench to join his new station without any delay.

The respondent further submitted that Shri Anoop Sagar took leave for one month from 04.01.2021 to 05.02.2021 and he has still not reported back to duty at RNI, New Delhi. However, his salary with effect from 28.12.2020, i.e. the date on which he joined at RNI, New Delhi, has been released.

4. In response the complainant vide e-mail dated 7.4.2021, submitted his rejoinder and he is not satisfied with the reply submitted by the respondent.

Observations /Recommendations:

i) Complainant is News Editor in Respondent establishment. In November 2019, the Complainant was transferred to RNI, New Delhi. The Complainant approached Hon'ble Central Administrative Tribunal, Ernakulam and Hon'ble High Court of Kerala challenging the transfer Order. Both the authorities directed M/o Information & Broadcasting to consider transfer



representation of the Complainant along with direction to the Complainant to fulfil some conditions. Thereafter, the Complainant approached this Court to cancel his transfer Order.

ii) Respondent submitted before this Court that the Complainant joined Respondent establishment in year 2009. Since his joining he was posted in Kerala till November 2019. He was transferred to New Delhi in November 2019. Transfer of the Complainant is not of routine nature. It was done considering the administrative exigencies.

iii) This Court had an opportunity to peruse Orders of Hon'ble Central Administrative Tribunal, Ernakulam (CAT Ernakulam) dated 02.11.2020 and Hon'ble High Court of Kerala order dated 23.11.2020. After careful perusal of two Orders, this Court concludes that the issue raised by the Complainant before this Court is already settled and intervention of this Court in this complaint is not warranted.

iv) Order of Hon'ble CAT Ernakulam specifically lays down that the applicant, i.e. Complainant in the present Complaint, failed to disclose disability status of his father. Hon'ble tribunal further specifically said that if the grievance presented before the tribunal by the present Complainant are true, he will be entitled to get exemption from transfer as per DoPT O.M. dated 08.10.2018.

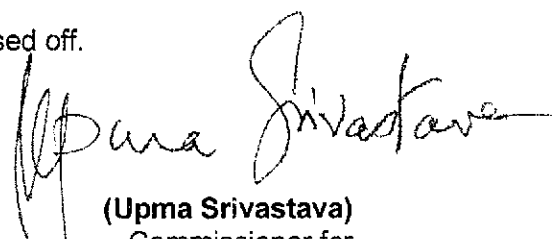
v) Further, CAT Ernakulam laid down two conditions -:

- a. He has to join the duties in New Delhi.
- b. He has to make representations before Respondent that he is sole care giver of his father.

vi) Hon'ble High Court also confirmed the Order and reiterated the conditions imposed by the CAT Ernakulam. Further, Hon'ble High Court directed the Complainant to make representation before the competent authority and directed that the competent authority shall consider the representation within two months.

vii) After filing Complaint before this Court, the Complainant submitted various representations in this Court to decide his case. Respondent submitted before this Court that the Complainant has joined the New Delhi office on 28.12.2020 and went on leave from 04.01.2021 after submitting representation as directed by the Court and did not report back to the office till 06.04.2021. Further the respondent has disposed of the representation given by the Complainant in view of the High Court Directions dated 23.11.2020. A detailed order was also issued considering DOP&T's OMs and the disability certificate of the beneficiary thereby dismissing the representation filed by the complainant. As such, this Court being a quasi judicial authority is not inclined to interfere in the present Complaint which has already been decided by the Hon'ble CAT and upheld by the Hon'ble High Court.

viii) Intervention of this Court is not warranted. The case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 03.12.2021



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: 12859/1022/2021

Complainant : Shri Narayan Kumar
S/o Shri Vivekananda Kumar
Khalsi (Helper)
East Central Railway
At- SIRASI, Post Samyagarh Dist. Patna
Bihar

Mobile No : 08678850483
Email : narayankumar536@gmail.com

Respondent : The GM/Divisional Railway Manager
Office of the Divisional Railway Manager (P)
East Central Railway,
Dhanbad

Email : drmdhneer@gmail.com

— P30550

— P30551

GIST OF COMPLAINT:

शिकायतकर्ता का अपनी शिकायत में कहना है कि वह 100 प्रतिशत दृष्टिबाधित दिव्यांगजन है तथा वरीय अनुभाग अभियंता (कार्य) में खलासी हेल्पर पद पर धनबाद मंडल के अधीन हजारीबाग टाउन, पूर्व मध्य रेलवे में कार्यरत है। शिकायतकर्ता ने आगे सूचित किया है कि उन्होंने अपने कार्यालय में दिनांक 20.02.2020 को अपने घर के नजदीक स्थानांतरण कराने हेतु आवेदन दिया था लेकिन दो वर्ष की अवधि बीत जाने के उपरांत भी उनका स्थानांतरण नहीं किया गया। शिकायतकर्ता का गृह जिला दानापुर मंडल के अंतर्गत आता है। शिकायतकर्ता ने आगे कहा कि उनके माता-पिता काफी बुर्जग होने के कारण अक्सर बीमार रहते हैं और स्वयं वह भी शत प्रतिशत दिव्यांगजन है। कार्यस्थल से घर की दूरी ज्यादा होने के कारण वह अपने साप्ताहिक विश्राम में भी बुर्जग माता-पिता से मिलने नहीं जा पाते।

अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उपयुक्त सभी तथ्यों पर विचार-विमर्श करते हुए उनका स्थानांतरण घर के नजदीक करवाने की कृपा की जाए।

2. मामले को दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 75 के अन्तर्गत पत्र दिनांक 15.09.2021 द्वारा प्रतिवादी के साथ उठाया गया।

3. In response, Assistant Personnel Officer, Divisional Railway Manager (P), East Central Railway, vide his letter dated 17.09.2021, submitted that Inter Divisional Transfer from Dhanbad Division to Danapur Division of Shri Narayan Kumar sent to Danapur Division for their consent which is not yet received. The respondent further submitted that after receipt of consent from Danapur Division, the complainant will be transferred to Danapur Division.

4. The complainant has not submitted any comments against rejoinder letter issued on 04.10.2021.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 18.11.2021. The following were present:

i) Shri Narayan Kumar – Complainant

ii) Shri Sri Shatrughan Prasad (AEM); and Shri C.S. Azad (DPO) – Respondent

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001; Tel.: 23386054, 23386154; Telefax : 23386006

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)

Observations / Recommendations:

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

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

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

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

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

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

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

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

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

STATUTORY PROVISIONS AND GUIDELINES

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

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

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

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

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

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

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

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

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

ANALYSIS OF THE PROVISIONS & GUIDELINES

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

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

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

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

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

12. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch

because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020

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

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

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

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

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

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



19. In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters court does not sit as court of appeal, but court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfil the international commitments and give equal treatment to Persons with Divyangjan.
20. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.
21. Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.
22. **ISSUE**—In case if employee who is care giver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?
23. O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.
24. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependant'.
25. Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

4. Women and children with disabilities.—(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal

basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”

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

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

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

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

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

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

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

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

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

PRESENT CASE

29. Complainant is posted in Hazaribagh Town which falls under Dhanbad division. His native place is Mukanna which comes under Danapur division. Complainant is 100% Visually Impaired. He applied for transfer to his native place on 20.02.2020, however no action has been taken by the Respondent.

30. Respondent informed the court that after receiving Complaint, the Complainant was transferred to Gaya which falls in Patna circle

31. Respondent apprised the court that it has forwarded Complainant's application to Danapur division. As soon as consent from Danapur division will be received, the Complainant will be transferred to Danapur division.

32. Case of the Complainant squarely falls under O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T. O.M. lays down that divyang employees may be posted near to their native place. The same guideline was reiterated in O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. In this O.M. it is provided that at the time of transfer/posting divyang employee may be given preference in transfer/posting. Objective of these guidelines is to provide an environment to divyang employee where they can perform and achieve desired results.

33. This Court recommends that the Respondent shall transfer the Complainant to his native place which comes under Danapur division. This court further recommends that the Respondent shall pursue the matter with Danapur Division proactively so that quick decision may be taken and guidelines of government can be implemented in letter and spirit without wastage of time.

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: 03.12.2021



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: 12817/1022/2021

Complainant : Shri Pankaj Kumar,
S/o Narendra Prasad Sinha
South Chitrangupta Nagar
Back of S.S. Public School
Kankarbagh, Patna-800020 Bihar
Mobile No: 08340173784
E-mail: pankaj0757@gmail.com

— R30552

Respondent : The General Manager
Union Bank of India
Human Resource department, Central Office,
239, Union Bank Bhavan, Vidhan Bhavan Marg,
Nariman Point Mumbai-400021
E-mail : gm.hrm@unionbankofindia.com

— R30553

GIST OF COMPLAINT:

The complainant Pankaj Kumar was selected as Credit officer, Scale II (Specialist Officer-Credit) by Union Bank of India under category physically challenged. The complainant is Polio affected since childhood having disability percentage is 50 percent and now he is diabetic since last two years. The complainant blood sugar level is not under control and due to that some other problem arises like joint pain and increase in Uric acid level doctor also told him increasing level of uric acid affect the kidney also.

The complainant further submitted that as per the offer letter he reported at FGMO, Ranchi on 21.08.2018, he requested to post him to Patna where he belongs to. However, he was posted to Sambalpur as decided by the competent authority.

Sambalpur is around 700 KM from his hometown. His parents are staying in Patna & due to old age they are suffering from multiple chronic health issues. He has been struggling since joining at 700 KM away, as he is not able to take care of his parents at the time of need.

The complainant further stated that due to the Covid-19 pandemic, he is not able to travel at regular intervals to Patna for taking care of his parents and the same has become a matter of serious concern and stress for him. Since last seven month his wife treatment is also going to him home place Patna and for that they have to visit regularly to the Doctor.

The complainant further submitted that he requested for transfer on 27.12.2019 for Patna and also sent letter Sambalpur recommendation on 06.07.2020. The complainant also mailed to MD & CEO on 15.01.2021 & 31.01.2021 there after old request has been disposed off and new request has been taken and again he had applied for request transfer. But his transfer request has not consider there after he mailed to MD & CEO on 9th June 2021 and 5th July 2021 but they had not considered his request transfer yet hence, keeping in view him genuine requirement. Now the complainant has requested to CCPD to consider his transfer request to Patna on humanitarian ground and as per policy and posting of person with disability.

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006

Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001; Tel.: 23386054, 23386154; Telefax : 23386006

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

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

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

The complainant has humbly requested to transfer his service to his home town branches on medical ground for OPH employees for safeguarding his health.

2. The matter was taken up with the Respondent vide letter dated 09.08.2021 under Section 75 of the RPwD Act, 2016.

3. In response, respondent General Manager (HR), vide his letter dated 06.09.2021 submitted the following facts:

i) The complainant Manager (Credit) had applied for request transfer on medical ground of himself and family from Regional office, Sambalpur to some branch in Patna coming under Regional office, Patna, Field General Manager office, Ranchi.

ii) The respondent further submitted that the complainants services are transferred to Regional office, Patna. He has been relieved from Regional Office, Sambalpur and has reported to Regional Office, Patna on 06.09.2021.

4. The complainant has submitted his rejoinder dated 11.10.2021 and submit the following facts:

i) The complainant submitted that the competent authority has given posting at office Gaya (e-AB) branch and he reported to Gaya (E-AB) branch as per competent authority order.

ii) The complainant requested HRD RO, Patna, Regional Head and Dy. Regional Head to have him posted in his home town or at any credit processing centre in home town so that he could contribute efficiently over a longer period of time but they ignored his request and posted him to a far-flung placed branch from his home town Patna.

iii) The complainant once again requested to CCPD Court to consider his request for indiscriminate place of posting.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 18.11.2021. The following were present:

i) Shri Pankaj Kumar – Complainant

ii) Shri Ambrish Kumar Singh, DGM 9HR) – Respondent

Observations / Recommendations:

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

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



and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were

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

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

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

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

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

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

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

STATUTORY PROVISIONS AND GUIDELINES

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

- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
- d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.
- e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T– This O.M. provides that employees belonging to Group C and D must be posted near to their native place.
- f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T– This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.
- g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T –This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.
- h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T –This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.
- i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

8. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the

desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

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

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

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

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

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

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

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

15. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or

PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

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

17. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble Court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and Court 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, Court also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



PRESENT CASE

29. Complaint is filed by spouse of the bank employee. At the time of filing Complaint, employee was posted in Sambalpur, Odisha. Native place of the Complainant is Patna, Bihar. Complainant has sought relief of transfer to native place on the ground of disability.

30. Respondent informed the court that after receiving Complaint, the Complainant was transferred to Gaya which falls in Patna circle.

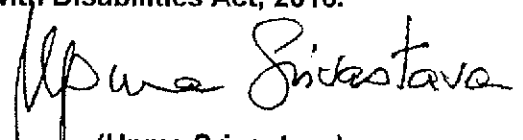
31. Complainant apprised this court during online hearing that transfer to Gaya does not provide him any relief. He still has to commute to Patna for availing necessary medical facilities as there are no facilities available in Gaya.

32. Case of the Complainant squarely falls under O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T. O.M. lays down that divyang employees may be posted near to their native place. The same guideline was reiterated in O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. in this O.M. it is provided that at the time of transfer/posting divyang employee may be given preference in transfer/posting. Objective of these guidelines is to provide an environment to divyang employee where they can perform and achieve desired results.

33. This Court recommends that the Respondent shall post the divyang employee on whose behalf this Complaint is filed to Patna or within 10-20 KMs of Patna.

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: 03.12.2021



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. 12832/1011/2021

Complainant:

Shri Vijay Garg,
532, Modern Apartment,
Plot No.5, Sector-15,
Rohini,
Delhi – 110 085

— P30541

....Complainant

Versus

Respondent 1:

School of Planning and Architecture,
(Through the Registrar)
4 Block B, Beside State Bank of India,
Indraprastha Marg,
I.P. Estate,
New Delhi – 110002

— P30542

....Respondent 1

Respondent 2:

Ministry of Education,
(Through the Secretary)
Government of India,
Shastri Bhawan,
New Delhi – 110 001

— P30543

....Respondent 2

Disability : 40% locomotor disability

RECORD OF PROCEEDINGS

A hearing through video conferencing by the Commissioner for Persons with Disabilities was held on 18.11.2021.

2. The following persons were present during the hearing ;

- 1) Complainant : Shri Vijay Garg
- 2) Respondent : Ms. Harshita Raghuwanshi, Advocate; Vibhash Tripathi (Legal Cell)

1 | Page

3. Both the parties were heard.
4. The Respondent submitted few documents. The same was perused and clarifications were sought from the Respondent during online hearing. Advocate representing the Respondent sought adjournment to obtain necessary directions & documents from the Respondent.

1. Section 77 of Rights of Persons with Disabilities Act, 2016 confers power on the Chief Commissioner for Persons with Disabilities to requisition any public record or its copy from any court or office or to require discovery or production of any document. Section 77 of Rights of Persons with Disabilities Act, 2016 is mentioned below –

SECTION 77 - Powers of Chief Commissioner.

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

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

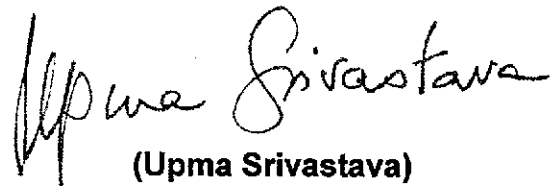


(2) Every proceeding before the Chief Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure,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

5. The Respondent is directed to answer the following ^{questions} ~~answers~~ supported by necessary documents within 7 days of receiving this notice –

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

Dated: 06.12.2021


(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. 12788/1011/2021

Complainant:

Shri Amit Yadav,
HUDA, Sector 1,
Narnaul,
Dist. Mahendergarh,
Haryana - 123001

— P30544

.....Complainant

Versus

Respondent :

Staff Selection Commission,
(Through the Chairman)
Block No.12, CGO Complex,
Lodhi Road,
New Delhi – 110 003.

— P30545

.....Respondent

Disability : 60% Mental Illness

Gist of Complaint:

Shri Shri Amit Yadav, the complainant with 60% Mental Illness vide his complaint dated 13.07.2021 submitted that Staff Selection Commission in its notification SSC-CGLE 2020 has not identified the posts for persons with Mental Illness category whereas as these posts are identified as per the M/o SJ&E notification dated 04.01.2021.

2. The matter was taken with the Chairman, SSC vide letter dated 23.07.2021.

1 | Page

3. The Under Secretary, SSC vide letter no. 3-4/2020-P&P-I (Vol.II) dated 10.08.2021 submitted that SSC is a recruiting agency which conducts examinations for recruitment of various Group 'B' and Group 'C' posts for filling up the vacancies reported by the indenting Ministries/Departments/Orgnisation. The total vacancies arising in an indenting unit and reckoning vacancy for a particular reserved category, including reservation for PwDs through the system of maintenance of roster, are the exclusive domain of respective identifying Ministries/Departments/Organizations. Thus, they report the vacancies (Horizontal and Vertical) to the Commission to be filled up by direct recruitment. The Commission does not have any role in the recognition of particular post either suitable or unsuitable for particular disability. The Respondent submitted that the Commission vide letter dated 25.05.2018 has asked all the indenting User Departments to identify the suitability of posts for newly identified categories of disabilities as per RPwD Act, 2016 and requested them to intimate the Commission in this regard. However, the Commission could collect requisite information from most of the User Departments on the basis of feedback received from these Use Departments, posts identified suitable for the new disabilities have duly been incorporated in the Notice of CGLE-2020 dated 29.12.2020. As none of User Departments have identified any post for 'Mental Illness' disability, no post is identified for 'Mental Illness' disability in the Notification / corrigenda of CGLE-2020.

4. The complainant vide his email dated 19.09.2021 submitted that strict instructions be given to DoP&T and SSC to include mental illness category in all suitable jobs. He submitted that according to Rights of Persons with Disabilities Act, 2016 and notification issued by Ministry of Empowerment of

Persons with Disabilities on 04.01.2021, Mental Illness is identified suitable for the posts of Preventive Officer, Income Tax Inspector, Excise and Custom Inspector and Assistant Audit Officer etc.

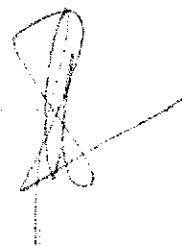
Observation/Recommendations:

5. Number of Complaints are filed before this court relating to non-implementation of Section 33 of Rights of Persons with Disabilities Act, 2016.

6. Identification of posts suitable for PwDs is the most basic part of the any recruitment cycle. Relevant provision of RPwD Act, 2016 on this point is Section 33. As per the provision it is positive obligation of the Appropriate Government to identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34. Ministry of Social Justice & Empowerment (MoSJE) published list of identified posts suitable for Divyangjan in 2013 and in 2021. Identification of posts suitable for Divyangjans is a detailed and conscious exercise conducted by committee comprising of Additional Secretary and Joint Secretaries of concerned Ministries. Absence of such list may result into two kinds of situations, i.e. either it may lead to arbitrary action by the establishments or it may result into serious repercussions like accidental deaths or serious life threatening injuries to Divyangjan. Therefore, MoSJE publishes list of posts which are identified suitable for different categories of Divyangjans. These posts are identified keeping in view maximum benefits of the Divyangjans and different kinds of jobs which can be performed by Divyang without endangering their safety and physical comfort. Reason behind identification and publishing the list of identification post is to avoid adverse repercussions.

7. It is imperative to list certain provisions of MoSJE notification dated 04.01.2021 –

- a) Note 2 of the notification lays down that this list is illustrative and not exhaustive. Hence, any department or ministry can add other posts in the list to suit their job requirements.
- b) Further, there are two provisions of the notification which deals with posts which are not mentioned in the list issued by MoSJE. Note 3 provides that if any post is not mentioned in the MoSJE list and exemption has also not been taken with respect to the post, however any person is already holding such post, then such post is automatically identified suitable for the person with such kind of disability with which the person holding the post is suffering. Similarly Note 5 provides that if a post having identical nature and place of job with respect to any identified post, the post should be construed to be identified even if the post has a different nomenclature and/or is placed in a different group.
- c) Note 4 of the notification is also indispensable to be mentioned. As per the provision if the post is identified in the feeder grade, the post in the promotional grade should also stand identified.
- d) Note 6 of the notification deals with a situation where there are more than one list. In case any organisation has separate list of identified posts suitable for Persons with Benchmark Disability then the list having wider range of identified categories (i.e. having more sub-categories under each category) would prevail. Intention of policy maker is to provide maximum benefit to Persons with Benchmark Disabilities by broadening the scope of opportunities which may be availed by Persons with Benchmark Disabilities.

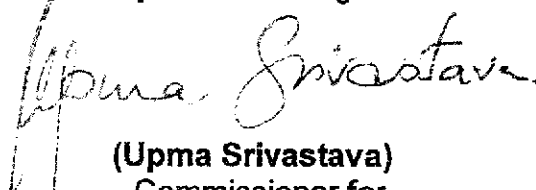


PRESENT CASE

8. In the present case grievance is related to advertisement dated 29.12.2020 issued by the Respondent notifying various vacancies in indenting organisation. Since the case is related to advertisement which was issued prior to 04.01.2021 hence intervention of this court is not warranted.

9. However, this Court recommends that SSC shall write to all the indenting organisations to implement Notification issued by MoSJE dated 04.01.2021 in letter and in spirit. As per Section 33 and 34 of Rights of Persons with Disabilities Act, 2016, it is statutory duty of all the Government Establishments to decide the issue of reservation strictly in according to MoSJE notification dated 04.01.2021.

Dated:06.12.2021


(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: 12840/1023/2021

Complainant: Shri Rohtash Singh
H.No. 443A, Sector - 7 A
Chandigarh - 160019
E-mail: <rohtashsingh1466@gmail.com>

— P30660

Respondent: Commanding Officer
Western Command Composite Signal Regiment
Chandimandir, Distt.-Panchkula (Haryana) - 134107
E-mail: <compositesmailbox1@gmail.com>

— P30661

Complainant: 70% low vision

GIST of the Complaint:

Complainant Shri Rohtash Singh, Civilian Switch Board Operator, Grade-01 vide complaint dated **06.08.2021** has submitted the following requests:

- case for posting out to non-signal unit be considered on priority and till issue of posting, the complainant be temporary attached with some unit / formation within the same station on the identified post. The aspect of identified post may also be kept in mind since the post of CSBO is identified for specified orthopaedic (locomotor) category PWD only.
- to furnish copy of One Man Enquiry (OME) report, Findings and Opinion of staff court of inquiry conducted on his complaint regarding allegations of corruption involved in appointment of CSBOs along with final direction passed by competent authority against personnel found blameworthy on the basis of opinion rendered by staff court of inquiry.

...2....

- to provide amended copy of form-16 for F.Y. 2018-19, F.Y 2019-20 and F.Y. 2020-21 after showing necessary exemption as applicable to complainant during the relevant financial years.
- necessary explanation for non-adherence of preventive measures and guidelines issued by various competent authority, particularly in the matter of PwD for causing unnecessary harassment be sought.
- to supply photocopy of APAR for year 2019 to the complainant.
- necessary directions for passing decision on his representation dt 04 Jan 2021 against the remarks/entries made against APAR for the year 2019 be communicated to complainant in specified time bound manners.
- copies of written orders passed for assigning / allotment of official task during the reporting year 2020-21 as requested by the complainant for completion/write of his self-appraisal be provided.
- the claim for re-imbursement of briefcase expenses be settled as the complainant is fully entitled as per govt guidelines. Necessary explanation for non- adherence of correct policy thereby causing harassment and incurring additional expenditure on the same claim be sought. Necessary penalty on personnel found responsible in the matter be imposed to compensate the complainant.
- to settle his case for transfer of NSP subscription amount along-with admissible interest amount into his newly allotted GPF Account No 1418911 at the earliest. All other related matters pending in the case may also be got expedited.
- to provide photocopy of pay bill register/copy of pay bills from Apr 2004 to till date as requested by him to ascertain correctness o22.10.2021 NPS contribution alongwith interest is correctly transferred into his newly allotted GPF account.
- the responsibility for non-compliance be fixed and appropriate penalty recommended to be imposed under the provisions of section 89 of the Act.



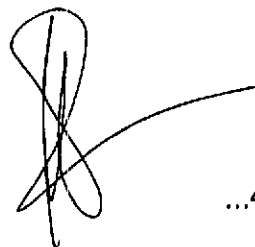
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2. The matter was taken up with the Respondent vide letter dated **23.08.2021** under Section 75 of the RPwD Act, 2016.

3. In response, respondent vide letter dated **21.09.2021** inter-alia submitted comments on the above points:

- case for posting out to non-signals unit had been considered and processed with higher headquarters through proper channel and same was intimated to the individual.
- the individual has been repeatedly asking the same details through his various RTIs to various agencies and it has repeatedly been informed to him that the ibid documents of information are not held with this office. Also, the remarks on Notings of the files while processing the administrative action against any individual is in fiduciary capacity and hence exempted from disclosure under section 8 (1) (e) of RTI Act 2005 which has also been ratified by DJAG, HQ WC.
- during the entire COVID-19 period the office was managing the mandated tasks with acute shortage of manpower. However, inspite of acute shortage of manpower, the individual's request was considered being a "Divyangjan" and this office exempted him from duties and allowed him to mark his attendance, keeping in view of a case of demise of No 14272535, Late Shri Sushil Kumar Choudhary, CSBO Gde-I of this unit, only for ensuring his own well being and safety during the pandemic situation. The detailed justifications/ clarifications on the issue as raised by the individual in this para are elaborated at para 7, 11 above.
- the individual has been intimated on many occasions that copy of Annual Performance Assessment Report (APAR) cannot be provided to any individual. However, the details of APAR will be or had been communicated to the individual by the Reviewing Officer.



...4....

....5....

- the individual has been informed that his representation had already been forwarded to higher HQ through proper channel and the individual will be intimated by The Records Signals directly being the competent authority. The ibid directions are still awaited.
- the individual is not entitled for Reimbursement for purchase of briefcase/ office bag as per policy on the subject.
- no such intimation regarding transfer to existing amount under NPS account of the individual to newly created GPF account has been received by this office from PCDA. Whenever, any direction on the subject will be received the case will be processed accordingly.
- the clarification remarks of PCDA received in this context are as under:- "In this context it is intimated that the month wise statement in r/o above named individual may be downloaded through CRA-NSDL portal by login id and password provided by NSDL. The transaction statement may be provided by this office i.e. Pay Account Office in case of Individual's PRN is inactive or frozen. Furthermore, it is submitted that the individual was also allowed to peruse all the documents held in this office in this regards and that has already been perused by the individual concerned.

4. Complainant vide rejoinder dated **05.10.2021** reiterated his grievance and requested for conduct of early hearing in his matter.

5. After considering the respondent's reply dated **21.09.2021** and the complainant's rejoinder, it was decided to hold a personal hearing in the matter and therefore, the case was listed for personal hearing on **23.11.2021** but due to administrative exigencies, hearing re-scheduled on **25.11.2021**.

Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **25.11.2021**. The following were present:

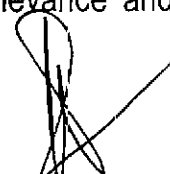


...6....

- Shri Rohtash Singh – complainant
- Lt. Col. Vinay Khatri and Shri Prabhakar Kumar on behalf of respondent


Observation/Recommendations:

6. Both the parties were heard.
7. Complainant raised issues related to posting of the complainant, concern for his physical security and work from home during Covid lockdown.
8. Complainant submits that he wants to shift from his present location because transport facility is not available at that location and hence it is very difficult for him to commute to his place of work. Complainant wants to be posted to 'N' area where he was previously posted. Further Complainant submits that he faces threat to his life. Complainant also submits that during Covid lockdown he was forced to attend place of work and work from home was not allotted to him.
9. Respondent submits that there is lack of transport facility available in 'N' area, where Complainant is seeking transfer hence submission of the Complainant lacks reason. On the issue of threat to life Respondent submits that he was offered residential accommodation within Cantonment area, however he himself refused to avail of the residential facility. On issue of attending office during Covid-19 lockdown, Respondent submits that he was asked to come to office only to mark his presence.
10. This Court recommends that the Respondent shall be posted to 'N' area so that the Respondent can perform his duties efficiently and achieve desired results. During online hearing Complainant also assured that he will have no problems which he might have to face because of lack of public transport in the area.
11. On the issue of threat to life and security, this Complainant failed to answer as to why he is not willing to avail of residential facility provided to him within the Cantonment area. Therefore, this Court concludes that the Complainant can approach the concerned authorities within the Respondent establishment to raise his grievance and for possible solutions.



12. On the issue of attendance during Covid-19 this Court brings the kind attention of the Respondent to guidelines issued by DoPT. O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M. DoPT continued to exempt divyang employees from attending office till 13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by latest O.M. dated 14.06.2021. Hence this Court recommends that the Respondent shall take into consideration these guidelines for effective implementation and adherence in future.

13. Case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 08.12.2021



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: 12842/1022/2021

Complainant : Shri Abhinav Diwedi
Junior Telecom Officer,
Azamgarh, Uttarpradesh
Mobile No: 09428818287
E-mail: abhinav8886@gmail.com

— P30615

Respondent : The Chairman & Managing Director
State Bank of India
H.R. Department, Local Head Office,
Bhadra, Ahmedabad-380001
Contact No: 079-25506630, 25503533,
Fax No: 079-25507743
E-mail: cmssphr.lhoahm@sbi.co.in, cmir.lhoahm@sbi.co.in,
cmid.lhoahm@sbi.co.in, agmphr.lhoahm@sbi.co.in

— P30616

GIST OF COMPLAINT:

The complainant Abhinav Diwedi and his wife Smt. Sudha are both differently abled and having a five year old son. His wife Smt. Sudha is working as a customer associate in CPPC, SBI Gandhinagar. The complainant was working in BSNL Gandhi Nagar and the complainant had been transferred from Gujarat Telecom Circle to Azamgarh (UP East telecom circle) in July 2019.

The complainant further stated that after his transfer from Gujarat Telecom Circle to UP East Telecom Circle, his wife applied for Inter Circle Transfer in November 2019 online. The complainant stated that after his transfer his wife, despite her disability, was managing the office responsibilities as well as household tasks on her own at Gandhinagar Gujarat. The complainant further stated that due to COVID-19 pandemic, she took decision to apply for leave without pay in March 20 as it was getting tough for her to manage everything on her own in pandemic time as creche facility were shut down during pandemic time. Her promotion/increments and carrier advancements were affected. She resumed her office in February 21 and was again forced to stay all alone on her own with our son. In April 21 corporate office has issued transfer order, but she is not yet relieved and no relief has been provided so far from LHO Gujarat Circle. The complainant has requested to CCPD Court's to pass necessary directives to the Bank for relieve his wife on humanitarian ground at the earliest.

2. The matter was taken up with the Respondent vide letter dated 07.09.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Dy. General Manager & CDO, State Bank of India, vide letter dated 04.10.2021 inter-alia submitted that Smt. Sudha Tiwari (PF No. 5926475), wife of Shri Abhinav Diwedi, joined the Bank's service on 05.01.2009 in Lucknow Circle and was subsequently transferred to Ahmedabad Circle in the year 2014. Smt Sudha Tiwari is working as Associate

(CSS) at Centralised Pension Processing Cell (CPPC) of the Bank, at Gandhinagar since 22.09.2014.

The respondent further submitted that Smt Tiwari has made an online Inter Circle Transfer request on 29.11.2019 in the "spouse category" which resulted in her name being listed after the older ICT applications in the "spouse Category". It is for this reason that her name did not appear in the ICT list released in April 2020. The Bank has considered the transfer request of Smt. Sudha Tiwari and approved the same vide common ICT order dated 1.04.2021. It is pertinent to mention that the ICT order is approved against recruitment of new Batch of Junior associates. However, the joining of new batch of Junior Associates is delayed on account COVID 19 pandemic. As a result, she could not be relieved. It is respectfully submitted that Smt. Sudha Tiwari has been relieved on 01.10.2021 from Ahmedabad Circle to Lucknow Circle.

The Competent Authority of the Bank approved the request and sanctioned sabbatical leave to Smt Tiwari from 02.03.2020 to 24.02.2021 i.e. for 360 days vide approved note dated 04.03.2020. The terms and conditions for sanction of the sabbatical leave and its impact is known to Smt Sudha Tiwari which is evident from the said letter made as per sabbatical leave guidelines.

The respondent further submitted that Shri Diwedi has stated that on completion of her approved sabbatical leave in February 2021 she resumed her office and as she was on leave without pay for a long time she could not take further leave. However, it is submitted that as per Bank's circular guidelines for COVID-19 "Persons with disabilities (PWD DIVYANGJAN) were exempted from attending office physically and were assigned "Work from Home" duties. The above exemption was reviewed and extended from time to time based on COVID-19 threat perception. Hence, the averment made by the applicant that Smt Sudha cannot take further leave is devoid of merit as leave was not required to be availed due to "Work from Home" policy of the Bank in respect of "Persons with disabilities (PWD-DIVYANGJAN) on account of COVID-19 pandemic, subject to conditions specified in said policy.


4. The complainant vide his rejoinder dated 24.10.2021, submitted that State bank of India management has considering the relieving of his wife Smt. Sudha. Now the complainant is requested to CCPD Court to pass an appropriate direction to the bank to convert sabbatical leave to work from home for the period during Covid-19.

Observations / Recommendations:

i) The Court received a reply from the complainant dated 24.10.2021, whereby the complainant expressed his gratitude to SBI management for empathetically considering the relieving of his wife Smt. Sudha. The complainant informed that her transfer matter is now resolved, but other issue is pending i.e conversion of Sabbatical leave to work from home for the period during Covid-19.

ii) This Court's appreciates the sympathetic view taken by the respondent. However, this Court's recommends that respondent may also consider the other issue raised by the complainant in his rejoinder dated 24.10.2021.

iii) Guidelines issued by DoPT are relevant in this matter. DoPT O.M. No. 11013/9/2014, dated 27.03.2020 exempted divyang employees of the government from attending office. Subsequent to this O.M. DoPT continued to exempt divyang employees from attending office till

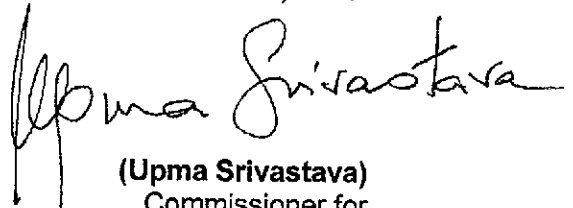


13.02.2021. DoPT by OM dated 13.02.2021 issued instruction that attendance of all the employees is imperative, without any exemption to any category of employees. Further by O.M. dated 19.04.2021, DoPT again exempted divyang employees from attending office. O.M. dated 19.04.2021 is further extended by latest O.M. dated 14.06.2021 and is still in force.

Hence, this Court recommends that the Respondent shall convert the sabbatical leave of the Complainant into 'work from home' during Covid-19 exemption period in accordance with DOPT OMs mentioned in preceding paragraphs.

5. 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.

6. This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 08.12.2021



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: 12790/1022/2021

Complainant : Madan Lal Gurjar
CPC Supervisor
Sambhar Lake-303604
Mobile No : 08619423959
Email : sambharlakeho@indiapost.gov.in
madanlalgurjarlsg@gmail.com

—P30617

Respondent : The Chief Postmaster General
Office of the Superintendent Post Office
Jaipur (Mfl) Division, Jaipur-302016
Rajasthan
E-mail : spost.jpmfl@gmail.com
Contact : 0141-2301996/0141-2302055

—P30618

GIST OF COMPLAINT:

प्रार्थी डाक विभाग में सांभर लेक सी पी सी मनेजर के पद पर दिनांक 15.01.2018 से कार्यरत है, तथा प्रार्थी दोनो पेरो से दिव्यांग (ओर्थो) है। विभाग की तबादला निति के अनुसार प्रार्थी के बिना चाहे तथा बिना लिखे उनका स्थान्तरण घर से काफी दूर कर दिया है, जहा पर प्रार्थी की शरीरिक परिस्थितिया उस कार्यालय के अनुकूल नहीं है।

प्रार्थी ने आगे सूचित किया है कि डाकघर से नए कार्यालय की दूरी 23 किलोमीटर है जिसमें न तो सीधी परिवहन सुविधा है। नए कार्यालय में दिव्यांगजन के लिए टॉयलेट की भी सुविधा नहीं है। प्रार्थी के घर से नजदीक डाकघर फुलेरा एल एस जी में उनके पद के अनुसार एल एस जी का पद रिक्त है लेकिन जबरन प्रार्थी को नरेना डाकघर भेज दिया है जो घर से 23 किलोमीटर दूर है।

अतः प्रार्थी ने आगे सूचित किया है कि उनकी परिस्थितिया इस अनुकूल नहीं की प्रार्थी आयोग में व्यक्तिगत रूप से हाजिर हो सके अतः उन्होंने निवेदन किया है कि उनका स्थानान्तरण रदद किया जाए या नजदीकी डाकघर फुलेरा में स्थानान्तरण करवाने की क्पा की जाए।

2. The matter was taken up with the Respondent vide letter dated 03.08.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Supdt. of Post Offices, Jaipur (Mfl.) Division, Jaipur vide his letter dated 06.09.2021 submitted that Shri Madan Lal Gurjar, LSG (NB) General Line Cadre, was working at Sambhar Lake HO-303604 Jaipur since 16.01.2018 at the post of Supervisor CPC (PLI) with additional charge of Postmaster Sambhar Lake H.O. The complainant completed his post tenure of three years in the present year i.e. 2021 and according to the guidelines issued by the Directorate; Department of Post dated 17.01.2021, that all group C officials shall have post tenure of 3 years. But keeping in view the surge of Covid-19 pandemic further a new guideline was issued by the Directorate department of Posts to supersede the previous guideline in which the sensitive post will have a post tenure of 3 years and non sensitive post will have a post tenure of 4 years which may be extended for a period of one year respectively in both the

cases

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
Sarojini House, 6, Bhagwan Dass Road, New Delhi-110001 ; Tel.: 23386054, 23386154 ; Telefax : 23386006

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

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

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

The respondent further submitted that identification of sensitive and non sensitive posts in Department of Posts was categorized through Directorate, Department of Post in which he staff working in CPC (PLI) was considered as most sensitive post and no relation (extension).

The respondent further submitted that the applicant has been transferred with due procedure and with the existing rules. It is further submitted that the distance of his new posting place Naraina sub post office is just 14 Kms from his earlier posting place i.e. Sambhar Lake H.O.

Further it is also submitted that the complainant has filed on O.A no. 291/203/2021 in the Hon'ble CAT Bench, Jaipur which is under hearing. Therefore, the respondent humbly submitted that as per the fact the complainant transfer is just and proper and in accordance with existing rules which doesn't require any interference / reshuffle.

4. The complainant filed his rejoinder dated 20.09.2021 submitted the following facts:-

- 1) प्रार्थी के घर से दूरी 21 किलोमीटर है इनके द्वारा 14 किलोमीटर बताई गयी है जो गलत है।
- 2) प्रार्थी के नजदीक पोस्ट आफिस फुलेरा एल एस जी है जिसकी दुरी 6 किलोमीटर है प्रतिवादी द्वारा गलत सूचना प्रदान की गयी है।
- 3) फुलेरा उप डाकघर में एल एस जी में पद अभी भी रिक्त है, प्रतिवादी द्वारा गलत सूचना प्रदान की गई है तथा प्राथी ने अनुरोध किया है कि सक्षम अधिकारी से जांच करवाई जा सकती है।
- 4) प्रार्थी को जहाँ पर पोस्टिंग दी गई है वहाँ पर दिव्यांग टाइलेट नहीं है प्रार्थी को काफी ज्यादा परेशानी है।
- 5) प्रार्थी ने निवेदन किया है कि उक्त प्रकरण को अतिशीघ्र निपटाने की कृपा की जाए।

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 02.12.2021. The following were present:

- i) Shri Madan Lal Gurjar: Complainant
- ii) Shri Mohan Singh, Superintendent, Jaipur Gramin Mandal : Respondent

Observations / Recommendations:

i) Complainant submits that his previous posting was Sambar lake post office and his new place of posting is Narena post office. Distance between home and new place of posting – 23 KMs. At new place of posting washroom facility for Divyangjan is also not available. Further Complainant submits that at another post office namely Fulera Post office is nearby to the Complainant's home. Posts of LSG are vacant in Fulera post office. Complainant has sought relief from this court to post him at Fulera post office.

ii) Respondent submits that the Complainant is holding sensitive post. As per the transfer policy of the establishment officers holding sensitive posts cannot be posted at same place for more than 3 years. Complainant completed his tenure of 3 years on 17.01.2021 and hence he was transferred. Respondent further apprised this Court that the Complainant filed his Complaint before Hon'ble Central Administrative Tribunal, Jaipur.



iii) Since the issue is already pending before Hon'ble Central Administrative Tribunal, Jaipur hence intervention of this Court is not warranted.

6. This case is disposed off.

Dated: 08.12.2021


(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: 12796/1022/2021

Complainant : Shri Prashant Kumar Sinha, IRS
Address: 502, Prithvi Apartments
Plot no. 17, Sector-52
Gurgaon-122011
(Opposite: Tau Devilal Park)

Mobile No : 08527071400

E-mail : prashantsinha26@hotmail.com

— 230619

Respondent : The Member (P&V)
CBIC, Dept. of Revenue,
Ministry of Finance
North Block, New Delhi

E-mail : member-admncbic@gov.in

— 230620

GIST OF COMPLAINT:

The complainant Prashant Kumar Sinha is an IRS (Customs & GST) officer of 1992 batch and posted in Delhi-NCR since September 2015 as Commissioner / Additional Director General in Dept. (CBIC, Dept. of Revenue, Ministry of Finance, GOI, North Block).

The complainant submitted that his 19 year old son master Pratyush Kumar Sinha is on 'Autism Spectrum Disorder 70% and is mentally retarded since birth. His autism condition is moderate and he is the caregiver to him on continuous basis. Presently, he is attending special school for disabled children (Pallavanjali) in Gurgaon.

The complainant further submitted that due to high BP, his both kidneys failed in November 2018 and he is on dialysis, three times a week, at Max Hospital, Gurgaon since then. This will continue till transplant is done. The complainant has registered himself for receiving Cadaver's organs with Max Hospital, Saket in October, 2019 and is in advance stage of getting it in near future.

The complainant stated that only three and half years of service left before superannuation. Shifting to Kolkata that too with his poor present health condition, at this stage would be devastating to the rehabilitation efforts being made by him for his son and his condition will deteriorate further.

The complainant have already made a representation dated 16.07.2021 to his Dept. (Member (P&V), CBIC) for his retention in Delhi-NCR. Therefore, the complainant is requested/prayed to CCPD to kindly consider his case for retention in Delhi-NCR.

2. The matter was taken up with the Respondent vide letter dated 23.07.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Commissioner, central Goods & Services Tax, Delhi North vide letter dated 17.09.2021 inter-alia submitted that the complainant had already approached the Central Administrative Tribunal, Principal Bench, New Delhi against his transfer order and the Ld. Tribunal vide order dated 27.07.21 has dismissed the OA No. 1391/2021 as filed by the complainant. Further, in case the complainant is aggrieved by the said order, he has to approach the Hon'ble Delhi High Court. Moreover, the complainant has an All India Service liability and can be posted anywhere throughout the country.

The respondent further submitted that officer remained posted in DG systems, Delhi from 10.04.2018, prior to his transfer to DG Audit Kolkata Zonal Unit and he remained posted in Delhi NCR since 28.08.2015.

The officer states that his son is mentally retarded since birth and it may be seen that the officer, during the past 19 years, had remained posted at different places including a deputation posting at Dhanbad (at Bharat Coking Coal Ltd. from 04.09.2009 to 27.09.2014), where the officer had himself applied and joined voluntarily. The officer has been transferred to Kolkata which is also a Class A city having all amenities and his transfer has been done on administrative grounds by the competent authority after carefully going through all the facts and as per the provisions of Transfer/Placement guidelines, 2018. The complainant is posted to a place (Kolkata, a metro city) where his health issues as well as medical issues of his son can be taken care very well.

The respondent further submitted that officer has been transferred to DG Audit Kolkata ZU vide office order 82/2021 dated 15.07.2021 which is also a Class A city having all amenities and his transfer is on administrative grounds done by the competent authority after carefully going through all the facts and as per the provisions of Transfer/Placement guidelines, 2018. Further, he is posted to a place (Kolkata, a metro city) where his health issues as well as medical issues of his son can be taken care very well.

The respondent further submitted that the officer belongs to Central Services 9Grade A) having all India Service liability and he can be transferred/posted to any place in India any time on his request or on administrative grounds as per the provisions of extant Transfer Placement guidelines, 2018. The officer does not have any vested right to a place of posting and it is upto the administration to decide posting of the officer as per the administrative requirement of the department.

4. In response, the complainant filed their rejoinder by email dated 22.09.2021, and submitted the following facts:

i) The entire comments given by the respondent are on the grounds that Govt is legally empowered to transfer a Central Govt. Employee anywhere in the Country and that he has no legal rights to challenge the same.

ii) All the case laws cited by the respondents are correct but limited to the Govt. Employees not having "autistic" or "mentally retarded" children. The complainant further stated that routine transfer of a Govt. employee cannot be questioned or challenged legally or on law ground but the employees having autistic or disabled children are to be treated differently and compassionately. They can't be mechanically equated/treated at par with other normal cases.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 21.10.2021. The following were present:

- i) Shri Prashant Kumar Sinha– Complainant
- ii) Shri Hanu Bhaskar, Advocate, and
Smt Pallabika Dutta, Joint Director– Respondent

Observations / Recommendations:

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

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

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

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

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

(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

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

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

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

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

STATUTORY PROVISIONS AND GUIDELINES

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

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

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

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

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

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

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

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

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

ANALYSIS OF THE PROVISIONS & GUIDELINES

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

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

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

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

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

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

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

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

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

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

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

18. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal

circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, Courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

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

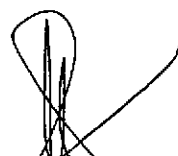
20. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

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

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

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

24. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for



exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependant'.

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

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

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

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

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

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

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

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

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

27. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted

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

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

PRESENT CASE

29. Complainant submits that his son is autistic. Further by order dated 15.07.2021, he was transferred to Kolkata from New Delhi. Before 15.07.2021, he was posted in New Delhi since September 2015. Further, the Complainant submits that he made representation before the Respondent to cancel his transfer Orders and to retain him in New Delhi, however the same has been rejected.

30. Respondent refuted the claims of the Complainant and submits that in past he has been posted at various locations and was posted in Dhanbad which is remote location. Moreover, Complainant raised the same issue before Central Administrative Tribunal, New Delhi which was decided Order dated 27.07.2021.

31. This Court had an opportunity to peruse Order of Hon'ble CAT, New Delhi dated 27.07.2021. In Para 5 of the Order Hon'ble CAT dismissed the Complainant's application and held that O.M. dated 17.11.2014 are directory in nature. The issue of O.M. being directory in nature and hence whether such O.Ms. need to be followed or not is well settled by virtue of Hon'ble CAT Order delivered in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 and by virtue of judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009). 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.

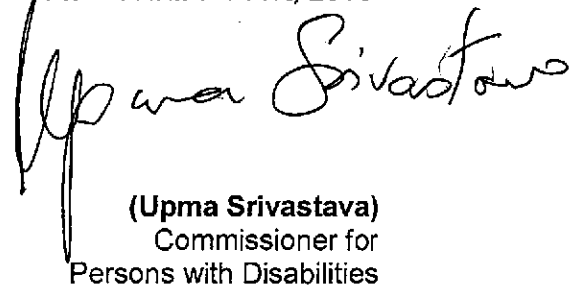


32. It is evident from plain reading of the Hon'ble CAT Order that the judgments delivered by Hon'ble Supreme Court, Hon'ble High Courts and Hon'ble Central Administrative Tribunals were not brought to the notice of the Hon'ble Central Administrative Tribunal.

33. This Court recommends that the Respondent shall implement the guidelines issued by Government delineated above in its letter and spirit and shall abide by the judgments of Hon'ble Supreme Court, Hon'ble High Courts and Hon'ble Central Administrative Tribunals mentioned in preceding paragraphs. This Court recommends that the Respondent shall exempt the Complainant from transfer to Kolkata from New Delhi so that the Complainant can take care of his autistic child.

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.

35. This case is disposed off.



(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 08.12.2021



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: 12782/1022/2021

Complainant : Shri Abdul Hameed
S/o Abdul Mannan
Ward No. 8, Kazi Pada (Tiwari Pada),
Toda Bhim, District-Karauli,
Rajasthan-321611

Mobile No : 09971556693
E-mail : nuzhat.hakeem83@gmail.com

Respondent : The General Manager
South Central Railway, Headquarter Office
Personnel Branch, 4th Floor,
Rail Nilayam, Secunderabad-500071
Andhra Pradesh

Contact No : 040-27830449
E-mail : gm@scr.railnet.gov.in
srdpo@railnet.gov.in

GIST OF COMPLAINT

The Complainant vide complaint dated 07.07.2021, submitted that his younger brother Abdul Martin is working as Tech, III, T.No. 74687/air Brake section wagon Workshop/GYPL at Guntupallai (Secunderabad) S.C. Railways. The distance is nearly 2000 KM from his home town Dist, Karauli, Rajasthan.

The complainant further submitted that he has the responsibility of bringing up young daughters, which are in their teenages and utmost care is needed at this phase of life. The complainant submitted that they are four brothers totally blind and he has to bear his responsibility as well.

The complainant submitted that he served for the country for 22 years in army as a soldier. During this period he often posted at far flung areas. At that time his parents were alive and they were supporting his family. His 17 years young son died in an accident he has broken by this incident in this position he needs family and family needs him. Now he feels all the darkness in his life. The complainant further submitted that at this juncture of life social liabilities are also increased many times, so they need him at his home town.

The complainant further submitted that he has applied two times for his transfer but no positive result so far. The complainant further submitted that it is not possible for us to leave his home town and get settled in Secunderabad, Andhra Pradesh because the salary of Abdul Martin is so meagre that they cannot afford day to day expenses as well as rent of the house.

The complainant has requested to CCPD Court to consider his complaint and transfer him from Secunderabad to Jaipur, Rajasthan.

2. The matter was taken up with the Respondent vide letter dated 22.07.2021 under Section 75 of the RPwD Act, 2016. But despite reminder dated 09.08.2021 & 31.08.2021, no response has been received from the respondent.

सरोजिनी हाउस, 6, भगवान दास रोड, नई दिल्ली-110001; दूरभाष: 23386054, 23386154; टेलीफैक्स : 23386006
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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)

3. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 02.11.2021. The following were present:

- i) Shri Abdul Hameed: Complainant
- ii) Shri Prem Kumar, Chairman Recruitment Cell: Respondent

Observations / Recommendations:

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

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

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

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

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



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

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

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

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

STATUTORY PROVISIONS AND GUIDELINES

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

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

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

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

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

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

g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T –This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may

be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

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

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


ANALYSIS OF THE PROVISIONS & GUIDELINES

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

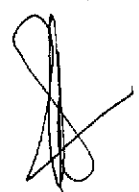
9. Even in case of employee who serves as care giver of divyang dependant, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

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

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



11. **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.
12. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020
13. Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.
14. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?
15. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.
16. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?
17. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble Court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and Courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.
18. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further,



Courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

27. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for

retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble Court held that the employee must be retained in Jaipur branch even after promotion.

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

PRESENT CASE

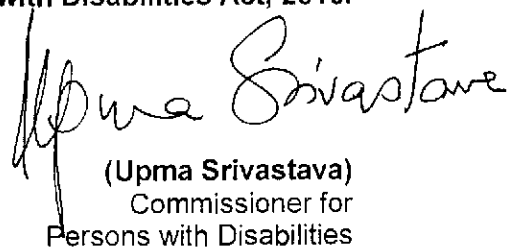
29. In the present case, employee of the Respondent establishment is care taker of his 4 brothers who are 100% Visually Impaired. Case of the Complainant falls under O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer. Objective of the O.M. is to provide an environment to the employee where he can take adequate care of his dependants and also perform his job efficiently.

30. This Court recommends that the employee of the Respondent establishment on whose behalf the Complaint is filed may be transferred to his native place, i.e. Jaipur where divyang dependants of the employee reside so that the employee may be able to take care of the divyang dependants.

31. During online hearing Respondent informed this Court that grievance was not filed before the Respondent establishment. Hence this Court is forwarding copy of Complaint received from the Complainant along with this Order for effective implementation of this Order and Government guidelines.

32. 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: 08.12.2021



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: 12843/1022/2021

Complainant : Shri Joseph John
PA, LSG, Kanhangad HO,
Kasaragod- 671315
Mobile No : 07359538245
Email : jmk.hpo@gmail.com

Respondent : The Chief Postmaster General
Kerala Postal Circle,
PMG, Junction, near Planetarium,
Thiruvananthapuram
Contact No : 0471-2304150/2560766
Email : apmgstaff.keralapost@gmail.com

GIST OF COMPLAINT:

The Complainant vide his complaint dated 10.08.2021, submitted that he is working as a Postal Assistant LSG, Kanhangad HO having 50% Locomotor disability. The complainant submitted an application for considering his transfer request from Kanhangad Head Post Office, in Kerala Postal Circle, Northern Region Calicut, Kasaragod Postal Division, to Vellarikundu Sub Post Office under the same postal administrative office, through the Superintendent of Post Offices, Kasaragod division on dated 23.03.2021.

The complainant further stated that Office of the Postmaster General, Northern region, Calicut released transfer order dated 23.04.2021, has not included his name for transfer from Kanhangad HO to Vellarikundu LSG SO. The complainant had submitted again representation dated 26.04.2021 for not considering his transfer request to the Postmaster General, Northern Region, Calicut through proper channel. But no information has been received from the authority.

The complainant further submitted that the post office in which presently he is working is 30 KMs away from his permanent residence. The complainant is a permanent resident of Punnakkunnu Village, Vellarikundu Thaluk Kasaragod District and coming under Vellarikundu SO area which is around 2.5 KMs away from his permanent residence. In this COVID-19 pandemic situation it is very difficult for him to travel 30 KMs to reach the present office.

The complainant is requested to CCPD Court to consider his request for transfer to an office nearest to his residence.

2. The matter was taken up with the Respondent vide letter dated 26.08.2021 under Section 75 of the RPwD Act, 2016.

3. In response, Assistant Director, Office of the Postmaster General Northern Region, Calicut submitted that the complainant had submitted a request seeking transfer to Vellarikundu Sub Post Office from Kanhangad Head Post Office. The complainant was allotted to Kasaragod

Division by office of the Chief Postmaster General, Trivandrum dated 21.1.2020 and was posted at Kanhangad Head Post Office, based on his request. This was the first choice of the official and he claimed it to be near to his place. The complainant preferred to choose Kanhangad despite the fact that post of Postmaster Vellarikundu was vacant.

The respondent further submitted that it is true that the complainant submitted a representation seeking transfer to Vellarikundu on 23.03.2021. This was considered by the Transfer and placement Committee but not recommended as the post of LSG SPM at Vellarikundu was not vacant. The post at Vellarikundu was already filled up on 22.07.2020 and posting given to other official who had requested for the same.

The respondent further submitted that it is true that the complainant is having 50% Locomotors disability as per the records submitted by him. The complainant had an option for applying for the post at Vellarikundu at the time he made the request for Kanhangad Head Post Office, as on that date, the post at Vellarikundu was vacant. In the request submitted he had specifically requested to consider him for this first choice Kanhangad Head Office (the second choice Kasaragod HO) which was near to his place and hence he was considered for the same.

The respondent further submitted that the complainant was considered but not recommended as the post at Vellarikundu was not vacant. The incumbent of the post of Vellarikundu had joined on 30.07.2020 and had not completed one year in the post. The Superintendent of Post Offices, Kasaragod, who is the controlling officer of the official, had not recommended the case on administrative grounds. The COVID situation existed even at the time the official was posted to Kanhangad Head Post Office and he joined the post, with the least hesitation, and waited for another 8 months to submit a request seeking transfer to Vellarikundu, to a post which was not vacant.

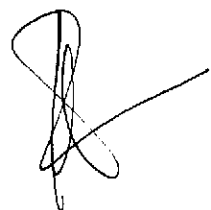
4. In response, the complainant filed his rejoinder by email dated 18.08.2021 submitted the following facts:

i) It is true that he has opted Kanhangad HO as his choice of place at that time. This was because of his superior, the Superintendent of Post Offices, Kasaragod Postal Division had asked telephonically him to give the preference to Kanhangad Head Post Office, because the office was not functioning smoothly at that time.

ii) The complainant further submitted that on that time there were lot of travelling facilities available to reach the office and going back to his residence. Now due to Covid-19 situations, very less travelling facilities are available and it is very risk for him to use public transport for travelling.

iii) The complainant further submitted that the respondent mentioned in the letter that the post of LSG PA was not vacant at the time of his request. It is humbly submitted that the official working at Vellarikkundu Post office had submitted his request for transferring to Kanhangad HO. This can be considered as mutual transfer.

The complainant once again requested to CCPD Court to consider his request and take suitable step to get him transfer to Vellarikkundu Post office at the earliest.

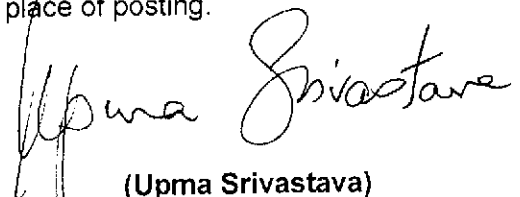


5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 02.12.2021. The following were present:

- i) Shri Joseph John – Complainant
- ii) Smt. Sarada V, Superintendent Post Office – Respondent

Observations / Recommendations:

- i) Complainant submits that at present he is posted in Kanhangad Head Office, which is 30 KMs away from his residence. He applied for transfer on 23.03.2021 to Vellarikundu Sub Post Office, which is only 2.5 KMs away from his residence. Application was rejected. Thereafter he also applied on 26.04.2021 and 06.08.2021. Ground for seeking transfer is that the distance between residence and place of posting is 30 KMs. Complainant also informed that one Mr. Baiju R who is posted at Vellarikundu Sub Post Office intends to get transferred to Kanhangad Head Office. Hence, the Respondent may consider mutual transfer of both the employees.
 - ii) Respondent submits that the Complainant joined on 12.06.2019. At the time of joining he was posted in Manjeshwar Post Office. Later posts of Postmaster and Lower Selection Grade were merged. All the officers were asked to submit their choice of posting. Based on the Complainant's submissions, he was allotted Kanhangad Post office which was his own choice. LSG post was vacant in Vellarikundu (place where he is seeking posting at present) but he was allotted Kanhangad. Mr. Baiju who is currently posted at Vellarikundu Sub Post Office has not completed 1 year tenure and hence mutual transfer cannot be taken into consideration.
 - iii) This Court concludes that there is no impediment in conducting mutual transfer of the Complainant and Mr. Baiju when Mr. Baiju completes 1 year of tenure at his place of posting. Complainant is seeking transfer at the place where Mr. Baiju is posted and Mr. Baiju is seeking transfer where Complainant is posted. The only impediment is that the mutual transfer is not possible since Mr. Baiju has not completed 1 year at his place of posting.
 - iv) This Court recommends that the Respondent shall do mutual transfer of the Complainant when Mr. Baiju completes 1 year of tenure at his new place of posting.
6. This case is disposed off.


(Upma Srivastava)
Commissioner for
Persons with Disabilities

Dated: 08.12.2021