



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: 12719/1022/2021

Complainant : Shri Raunak Singh  
Inspector of GST & Central Excise,  
Ahmedabad South Commissionerate, — R29064  
Ahmedabad-380015  
E-mail : [singh.raunak07@gmail.com](mailto:singh.raunak07@gmail.com)  
Respondent : The Chairman  
Central Board of Indirect Taxes and Customs, — R29065  
North Block, New Delhi-110001  
The Commissioner  
CGST & Central Excise Zone Lucknow  
7-A, Ashok Marg Lucknow — R29066  
Lucknow, Uttar Pradesh-2260001  
Phone No : 0522-2233063  
Email : [lkocadrecontrol@gmail.com](mailto:lkocadrecontrol@gmail.com)

#### GIST OF COMPLAINT:

The complainant Shri Raunak Singh, Inspector of GST & Central Excise, is a person suffering from 50% hearing disability in both ears submitted that he is a permanent resident in Uttar Pradesh. The complainant had joined as an Inspector of Central Excise, in Central Excise department as a direct recruit in the CCA Vadodra Zone under CBEC (now CBIC) on 07.06.2016, after qualifying SSC combined graduate level exam 2014. The complainant is presently working as Inspector of Central Goods and Service Tax & Central Excise, Ahmedabad South Commissionerate under the Cadre Controlling Authority (CCA), Vadodra Zone. The complainant having hearing disability in both ears and suffering a lot of difficulties in day to day life. The person's native place is Kanpur (Uttar Pradesh) and being posted in Ahmedabad (Gujarat), which is a far place from his home town. His wife also died prematurely on 29.06.2020. The complainant is deeply shocked after this incident because of which he is mentally and physically disturbed.

The complainant submitted that his mother is working in the Directorate of Industries of Uttar Pradesh Government. His grandfather is 80 years old. He is also suffering from heart disease and has to take him to doctor for regular check-up.

The complainant further stated that after this incident he wants to live with his family so that he can come out of this shock as soon as possible and take care of himself and his family since his mother is an Govt. employee of Uttar Pradesh Govt. It is very difficult for her to come to Ahmedabad.

The complainant stated that he requested to Pr. Chief Commissioner CGST & Central Excise, Ahmedabad for his transfer to Kanpur on 28.07.2020 but nothing has come up till now. The complainant had also given his representation on 20.11.2017 for Inter Commissionerate Transfer from CCA Vadodara Zone to CCA Lucknow Zone through proper channel on physical handicapped ground. The complainant further submitted that he had already spent almost 5 years in the city Ahmedabad and being a PwD he was forced to live a lonely life.

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(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 requested to CCPD to consider his transfer application/representation from CCA Chennai Zone to CCA Lucknow Zone which is a basic right of the disabled person to posting near their native place.

The matter was taken up with the Respondent vide letter dated 27.05.2021 under Section 75 of the RPwD Act, 2016.

In response, Shri Ganesh Chandra Yadav, respondent, Joint Commissioner, CGST & Central Excise Zone Lucknow, vide email dated 23.07.2021 inter-alia submitted that banning ICT by Board was autocratic. ICT (i.e. transfers from one cadre controlling authority to another) of Group 'B' (Non Gazetted) and Group 'C' employees were taking place on the basis of Board's letter no: A.22015/23/2011-Ad.III dated 27.10.2011. Such Inter-Commissionerate transfers were allowed subject to availability of vacancy and certain conditions.

The transfers under ICT from one Cadre Controlling Authority to another are not merely a transfer from one station to another or from one charge to another or change in posting. It entails change in cadre from one Cadre Controlling Authority to another Cadre Controlling Authority. It amounts to fresh appointment/recruitment that adversely affects the seniority in the Zone and distorts the order of merit.

Board also vide its circular F.No. A-22015/117/2015-Ad.IIIA dated 20.09.2018 has already clarified that 'Recruitment Rules, 2016 do not have any provision for recruitment by absorption and accordingly, no ICT application can be considered after coming into force of the Recruitment Rules, 2016.

The respondent further stated that Inspector Cadre recruitment is done by staff Selection Commission and selection is done on all India bases in open competition. Selected candidates are allocated to different Zones on their merit by Merit Cum Preference criteria i.e. candidate who have scored relatively more marks get Zone of their preference against available vacancies. In the past i.e. before the introduction of the Central Excise and Customs Commissionerate Inspector (Central Excise, Preventive Officer and Examiner Group B Posts Recruitment Rule, 2016, candidates, after joining, applied for ICT which was like a backdoor entry in the Zone of their choice circumventing the merit based zone allocation system at the level of SSC at the time of recruitment.

The respondent prayed to the Court of Chief Commissioner for PwDs (Divyangjan) be pleased to out rightly reject the untenable and unwarranted request of the applicant for Inter Commissionerate Transfer which is against standing instructions of DoPT, CBIC and statutory provisions of the Central Excise and Customs Commissionerate Inspector (Central Excise, Preventive Officer and Examiner Group B Posts Recruitment Rule, 2016.

In response, the complainant Shri Raunak Singh Inspector of GST & Central Excise filed their rejoinder by post dated 07.08.2021 submitted the following facts:

The complainant denies all the averments made and contentions raised in the para-wise comments filed by the Shri Ganesh Chandra Yadav.

The complainant stated that due to his serious family problems, he had applied for Inter Commissionerate Transfer from Vadodara Zone, Gujarat to Lucknow Zone, Uttar Pradesh from the place of his present posting to his native place.



The Complainant submitted that the Inter Commissionerate Transfer (ICT) for the employees working as Inspectors is concerned, department does not have a clear policy. Some time they allow ICT then suddenly they discontinue the same.

The complainant joined the service of respondent department on 07.06.2016 after qualifying Staff Selection Commission Combined Graduate Level Examination, 2014. When he had joined the department in the year 2016, ICT was permissible. As per the merit list, he could have been posted in any place of his choice.

The complainant further stated that in group C and A post, ICT is available even today. Group A officer takes less than a month's time to get his ICT order issued. A group C employee may take some time to clear his name but finally, he too gets it. Only the persons holding the post of Inspectors are not entitled to get this benefit. Therefore, the policy of the department is arbitrary, discriminatory and in violation of Articles 14, 16 and 21 of the Constitution of India.

The complainant once again requested and prays to consider his application Inter-Commissionerate transfer on physical handicapped ground.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 27.08.2021. The following were present:

- i) Shri Raunak Singh – Complainant
- ii) Smt. Hema Bindu, Joint Secretary (Admn), CBIT– Respondent
- iii) Smt. Priya Ranjan Srivastava, Joint Commissioner-Respondent

**Case No 2** : **12761/1022/2021**

**Complainant** : Shri Amit Kumar Lal  
Inspector of GST & Central Excise  
Ponneri Division, Range-1  
Chennai Outer Commissionerate,  
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**Mobile No** : 08340202570  
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— R29067

**Respondent** : Office of the Principal Chief Commissioner of  
GST & Central Excise, Tamilnadu and Puducherry Zone  
26/1, Mahatma Gandhi Road, Nungambakkam,  
Chennai-600034

**Contact No** : 044-28331011  
**Fax No** : 044-28331113

— R29068

The Chairman  
Central Board of Indirect Taxes and Customs  
North Block, New Delhi-110001  
E-mail [chmn-cbic@gov.in](mailto:chmn-cbic@gov.in)

#### GIST OF COMPLAINT:

The complainant Amit Kumar Lal had joined as Tax Assistant in Central Excise department as a direct recruit in CCA Chennai Zone under CBEC (Now CBIC) on 08.01.2013, after qualifying Staff Selection Commission Combined Graduate Level Exam 2011. Presently the complainant is working as Inspector of Central Goods and Service Tax & Central Excise, Chennai North Commissionerate under the Cadre Controlling Authority (CCA), Chennai Zone. The complainant is suffering and facing a lot of difficulties in his day to day life in Chennai, being



a person with disability. The complainant further stated that he has no family member or known person living in Chennai who can assist him in his day to day life.

The complainant submitted that he had communicated his grievances and requested for transfer on 24.04.2017 from CCA Chennai Zone to CCA Ranchi Zone through proper channel on physically handicapped ground but there is no positive response from respondents. The Chennai Zone is yet to give him NOC. The complainant requests to CCPD to consider his Inter Commissionerate transfer application/representation from CCA Chennai Zone Ranchi Zone.

The matter was taken up with the Respondent vide letter dated 12.07.2021 under Section 75 of the RPwD Act, 2016.

In response, respondent Shri B. Senthil Velavan, Additional Commissioner vide their letter dated 23.07.2021 submitted that Shri Amit Kumar Lal joined the department as direct recruit Tax Assistant on 08.01.2013 and is presently working as Inspector in Chennai North Commissionerate coming under the jurisdiction of CCA, Chennai. Shri Amit Kumar Lal in his representation has stated that after fulfilling all the terms and conditions as per CBIC Circular F.No. 22015/23/2011-Ad.III.a dated 27.10.2011 and after communicating grievances and requested for transfer from CCA Chennai Zone to Ranchi Zone on physically handicapped grounds, Chennai Zone is yet to give NOC for Inter Commissionerate Transfer ICT to Ranchi Zone. The respondent submitted that even if Shri Amit Kumar Lal was issued with NOC for ICT in 2017 when he applied, he would have had to repatriate back to the parent Commissionerate after the issuance of Board's Circular F.No. A 22015/117/2016-Ad.IIIA dated 20.09.2018 since Board vide the above Circular clarified that the recruitment rules, 2016 do not have any provision for recruitment by absorption and accordingly, no ICT application can be considered after coming into force of the recruitment rules, 2016.

Further, the respondent informed that the complainant had joined the department as direct recruit Tax Assistant on 08.01.2013, he could have applied for ICT in the grade of Tax Assistant and could have proceeded on ICT after completing 3 years of service, but Shri Amit Kumar Lal had waited till he got his promotion to the grade of Inspector and then applied for ICT on physically challenged grounds in 2017.

The respondent further submitted that 14 applications for ICT have been received on physically challenged grounds from Inspectors who have completed the stipulated years of service and all the 14 Inspectors have been issued with NOC for ICT to the Zones they requested for.

In response, the complainant Shri Amit Kumar Lal, filed his rejoinder by email dated 11.08.2021 and submitted that the department does not have clear policy because sometimes they allow ICT then discontinue the same. The Tamilnadu and Puducherry zone vide their letter dated 12.01.2018 fixed the criteria of 02 years for forwarding of representations for physically handicapped. Due to ban on ICT his request was not considered. At present the complainant completed 04 years and 04 months approximately in the cadre of Inspector.

The complainant further submitted that after completion of 2 years of service he was promoted as Executive assistant (erstwhile Senior Tax Assistant) on 01.04.2015. After completion of 3 years of regular service, he had applied for ICT from Chennai zone to Ranchi zone on physically handicapped ground on 12.02.2016 which remains unanswered by CCA, Chennai Zone.

The complainant did not agree with the comments submitted by the respondent and he again requested to consider his application for Inter Commissionerate Transfer on Physically ground from Chennai Zone to Ranch Zone.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 27.08.2021. The following were present:

- i) Shri Amit Kumar Lal- Complainant
- ii) Smt. Hema Bindu, Joint Secretary (Admn), CBIT- Respondent
- iii) Smt. K.V. Murlidharan, Joint Commissioner - Respondent

**Case No 3** : **12760/1022/2021**

**Complainant** : Shri Rahul Srivastava  
Inspector of GST & Central Excise  
Anna Nagar Division  
Chennai North Commissionerate  
2054, Newry Towers, 12<sup>th</sup> Main Road,  
Anna Nagar, Chennai-600040

**E-mail** : Rahul\_srivastava.89@rediffmail.com

**Respondent** : The Chairman  
Central Board of Indirect Taxes and Customs  
North Block, New Delhi-110001  
E-mail [chmn-cbic@gov.in](mailto:chmn-cbic@gov.in)

Office of the Chief Commissioner  
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— R29069

#### GIST OF COMPLAINT:

The complainant Rahul Srivastava is a person suffering from 50% hearing impairment Disability. The Complainant is permanent resident of Keshav Nagar-2, Sitapur Road, Lucknow Uttar Pradesh. He had joined as an Inspector of Central Excise, in Central Excise department as a direct recruit in the CCA Chennai Zone under CBEC (Now CBIC) on 18.04.2016, after qualifying Staff Selection Commission Combined graduate Level Exam 2013. He is presently working as Inspector of Central Goods and Service Tax & Central Excise, Chennai North Commissionerate under the Cadre Controlling Authority (CCA), Chennai Zone. The complainant is a person with hearing disability (PwD) and suffering a lot of difficulties in day to day life in Chennai.

The complainant stated that being a hearing impaired person, it is very difficult for him to understand Tamil language, which does not have any similarity with English or Hindi. It took years of school and home education to train listening ability to understand these two languages. Tamil being a new language with very difficult dialect and pronunciation, it is extremely difficult for him to understand and learn Tamil language. The complainant was recruited under recruitment rules, 2002 which had the provision of transfer after completion of probation period as per request of employee.

The Complainant further submitted that he had completed his probation on 18.04.2018 and as per extant guidelines issued by the then Principal Chief Commissioner of GST and Central Excise, Tamilnadu and Puducherry Zone under C. no. II/3/29/2014-CCA (ESTT) Vol. III

dated 12.01.2018 wherein it was mentioned "ICT request in respect of Physically Challenged Officers should be entertained only on completion of the probation period of two years of service". The complainant had given request for Inter Commissionerate Transfer from CCA Chennai Zone to CCA Lucknow Zone through proper channel on physically handicapped ground on 1.06.2018, 25.06.2018 and 11.07.2018 after fulfilling guidelines as per above cited circular and Central Board of Indirect taxes & Customs, Circular F. No. 22015/23/2011-Ad.III dated 27.10.2011.

The complainant further submitted that he had applied for Inter Commissionerate Transfer on loan basis dated 20.06.2019 to the Principle Chief Commissioner, Lucknow zone wherein they accepted his application under C. No. II (3) CCSC/Loan Basis/Insp/LDO/2017/pt/dated 28.06.2019 based on grant of NOC from Chennai Zone. The complainant has prayed to CCPD to consider his Inter Commissionerate transfer application/representation from CCA Chennai Zone to Lucknow Zone in the light of the DOPT Guidelines.

The matter was taken up with the Respondent vide letter dated 08.07.2021 under Section 75 of the RPwD Act, 2016.

In response, respondent Shri B. Senthil Velavan, Additional Commissioner vide their letter dated 26.07.2021 submitted that even if the complainant was issued with No Objection Certificate (NOC) for ICT in 2018 when he applied, he would have had to repatriate back to the parent Commissionerate after the issuance of Board's Circular F.No. A 22015/117/2016-Ad.IIIA dated 20.09.2018 since recruitment rules, 2016 do not have any provision for recruitment by absorption and accordingly, no ICT application can be considered after implementation of the Recruitment rules, 2016.

The respondent further stated that Inter Commissionerate Transfer in the Grade of Inspectors issued on or after 26.12.2016 (i.e. from the date of enactment of RR, 2016) will be non-est and accordingly any officer who has joined another zone in pursuance of such order shall be treated as a deemed case on loan basis w.e.f. 26.12.2016 and that these officers shall be reverted to their parent zones. Henceforth, in view of the above Circular issued by Board, Shri Rahul Srivastava, Inspector is not eligible for ICT to any zone. The circular is a policy decision of the CBIC and applicable to all categories of Inspectors and not to the Physically Challenged alone. Therefore, there is no discrimination meted out to this candidate. Hence, the respondent informed that there is no action pending from this office with regard to Inter Commissionerate Transfer of Shri Rahul Srivastava to Lucknow Zone.

The respondent further submitted that the complainant had applied for ICT on loan basis to the Principal Chief Commissioner, Lucknow zone and that Chennai Zone is yet to give NOC for ICT on loan basis to Lucknow Zone. In this regard they informed that the this office is not considering any application from officers requesting for transfer on loan basis due to acute shortage of vacancies in the cadre of Inspectors in Chennai Cadre Control Zone.

Another respondent, Priya Ranjan Srivastava, Joint Commissioner, vide their email dated 12.08.2021 submitted that all the instructions of ICT have been superseded by the CBIC Circular F.No. 22.15/117/2016-Ad.IIIA dated 20.09.2018 whereby all ICTs were banned altogether.



The complainant vide their letter dated 20.06.2019 made an application for ICT which was duly received in this office on 25.06.2019 as advance copy. Since his representation was not received through proper channel, no action was taken on his application on loan basis.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 27.08.2021. The following were present:

- i) Shri Rahul Srivastava– Complainant
- ii) Smt. Hema Bindu, Joint Secretary (Admn), CBIT– Respondent
- iii) Smt. K.V. Murlidharan, Joint Commissioner -Respondent

**Observation / Recommendations:**

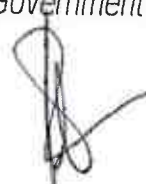
1. This court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.
2. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfil obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were:-
  - a. To fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,
  - b. To create barrier free environment for Persons with Disabilities,
  - c. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons.
3. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –
  - (a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
  - (b) non-discrimination;
  - (c) full and effective participation and inclusion in society;



- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
  - (e) equality of opportunity;
  - (f) accessibility;
  - (g) equality between men and women;
  - (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.
4. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.
  5. Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.
  6. Issues related to transfer and posting to divyang employees may be divided into three categories -:
    - a) Posting of divyang employee at native place,
    - b) Exemption from routine transfer of divyang employee,
    - c) Posting of employee who serves as care giver of divyang dependant.

#### STATUTORY PROVISIONS AND GUIDELINES

7. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.
- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
- d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigencies, 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 percent 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, three Complainants have filed common Complaint. Grievance of the Complainants is that they have been posted at far away locations from their native place. Respondent has submitted that the Complainants cannot be transferred to their native place because in Respondent establishment Inter Commissionerate Transfer is banned. Native place of the Complainants is situated in zone of different cadre controlling authority. Transfer of Complainants to their native place will amount to Inter Commissionerate Transfer (ICT).
30. Respondent further stated that In Group 'B' and 'C', ICT was taking place on the basis of board circular dated 27.10.2011. Above circular derived its force from Special Provisions of Recruitment Rules of Inspectors CBIC 2002. In year 2016 these Recruitment Rules were amended and thereafter notified. In 2016 Recruitment Rules special provision under which ICT was taking place got omitted.
31. Under 2016 Recruitment Rules, new circular was issued on 20th September 2018. This circular expressly banned ICT and also laid down that all employees who got transferred under ICT from year 2011 till 2018, will be considered on loan till 31st March 2019 and thereafter they shall be relieved to their parent zones.
32. Respondent also contends that DoPT O.Ms. which provide for PwD employees' transfer to their native place are not mandatory in nature. These O.Ms. do not impose binding

obligations. Further Respondent has relied upon the judgment of Hon'ble Supreme Court in UNION OF INDIA v. SOMASUNDARAM VISHWANATH in which the Hon'ble apex court held that Recruitment Rules are Rules made under Article 309 of Indian Constitution. If there is conflict between Rules made under Article 309 and executive instructions then Rules made under Article 309 shall prevail over executive guidelines.

33. Contention of the Respondent related to mandatory or directory nature of government instructions have already been dealt with in the preceding paragraphs. This court rejects this contention that O.Ms. issued by DoP&T are only directory and Respondent is not bound by the same.
34. As far as judgment of Hon'ble Supreme Court in UNION OF INDIA v. SOMASUNDARAM VISHWANATH, contention of Respondent is correct that if there is conflict between Recruitment Rules made under Article 309 and instructions passed by the government, then Rules made under Article 309 supersede government guidelines. In the same judgment, Supreme Court held that if Rules made under Article 309 are skeletal in nature then guidelines made by the government become binding. In this case it is not evident from reading of the Recruitment Rules that issue of PwD employees' transfer was dealt with in the rules. There is no particular provision for transfer for Persons with Disabilities Hence, Recruitment Rules may be interpreted as of 'skeletal' nature with respect to transfer of PwDs and therefore, guidelines of DoPT on the issue of PwD transfer become binding.
35. Moreover, Recruitment Rules relied upon by the Respondent are The Central Excise and Customs Commissionerate Inspector Recruitment Rules 2016, notified on 26.12.2016. These Rules do not prescribe ban on Inter Commissionerate Transfer. As admitted by the Respondent, ban on ICT was imposed by circular dated 20.09.2018 because amended Recruitment Rules of 2016 contained no provision for ICT. Such provision was present in Recruitment Rules prevailing before amended Rules were notified.
36. This court recommends that the Respondent shall review and revise the circular dated 20.09.2018, by virtue of which blanket ban was imposed on Inter Commissionerate Transfer and shall create an exception in matters of Inter Commissionerate Transfer for employees who are Persons with Disabilities. Respondent establishment may continue ban on Inter Commissionerate Transfer of employees not belonging to Persons with Disabilities. However, considering Section 20(5) of Rights of Persons with Disabilities Act, 2016 and various O.Ms. issued under 2016 Act or Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Respondent is recommended to create exception in matter of Inter Commissionerate Transfers for employees belonging to Persons with Disabilities category and transfer the Complainants to their native place. Further, till such time this circular is revised, the respondent may consider to transfer the complainants to their native places on loan basis, to ease their difficulties and allowing them to lead a dignified normal life. This action of the respondent shall prove that the respondent is committed to implementation of RPwD Act 2016 both in letter & spirit.





37. A copy of these orders is also being marked to Secretary, Department of Revenue, Govt. of India for his reference and seeking Cooperation in early implementation of these orders.

38 This case is disposed off

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 16.09.2021



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: 12727/1022/2021 | P29072

Complainant : Shri Rajesh Kumar Yadav  
Jr. Engineer (AM)  
Power Grid Corporation of India Limited  
Govt. of India Enterprises  
765/400/220 kV Sub-Station, Near Malwa College  
NH- 75, Gwalior-Jhansi Highway  
Vill, Adupura, P.O: Rora, Distt. : Gwalior-475001  
Madhya Pradesh  
Mobile No : 09685918092/07049922585  
E-mail: [rajesh.yadav@powergrid.in](mailto:rajesh.yadav@powergrid.in)

Respondent : The Chairman & Managing Director,  
Power Grid Corporation of India Ltd  
Corporate Centre, Saudamini,  
Plot No. 02m Sector 29, Near Iffco Chowk,  
Gurgaon (Haryana)  
E-mail : [cmd@powergrid.in](mailto:cmd@powergrid.in)  
Contact No : 09650990516

— P29072

### GIST OF COMPLAINT

The complainant Shri Rajesh Kumar Yadav, vide complaint by email, dated 16<sup>th</sup> May 2021, submitted that he is working as Junior Engineer at Gwalior Substation in Power Grid Corporation of India Ltd (Govt. of India Enterprises) since 2009 from joining.

The complainant submitted that his son (Master Nikhil Yadav) is suffering from 75% Muscular Dystrophy Disability, and undergoing treatment from Sir Ganga Ram Hospital New Delhi and taking physiotherapy at Gwalior since 2013.

The complainant further stated that his department transferred him from Gwalior Substation (M.P.) to Line office Nashik (Maharashtra) due to rotation transfer vide office order no 22/2021 dated 24.03.2021 with his reliving date as 03.04.2021, which was first extended to 01.05.2021 on his request and that to 01.06.2021 due to COVID-19 situation.

The complainant further submitted that because of above mentioned condition of his son, his transfer order is not in consonance with the DOP&T's order no 42011/3/2014 Dated 08.10.2018, regarding exemption from the routine exercise of transfer/rotation transfer to Nashik (Maharashtra). There will be an impact on systematic rehabilitation which will have an adverse effect on his son's physical and mental development, which is adverse to the principle of empowerment in the Right to Persons with Disabilities Act 2016.

Therefore, the complainant is requested to CCPD for cancelling his transfer order to Nashik (Maharashtra). However, if the transfer from his current location (Gwalior substation) is absolutely mandatory then the complainant urge to get his transferred to Agra /Lucknow substation or to any other location near his native place Pratapgarh (U.P.) in the state of Uttar Pradesh where they can get the best physiotherapy and systematic rehabilitation for his

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

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

disabled son (Agra for treatment at Sir Ganga Ram Hospital New Delhi or Lucknow for treatment in P.G. I. Lucknow).

2. The matter was taken up with the Respondent vide letter dated 31.05.2021 under section 75 of the RPwD Act 2016.

3. The respondent Shri S.J. Lakra, Sr. GM-HR, Power Grid Corporation of India vide their letter dated 15.07.2021 submitted the following facts:

i) Shri Rajesh Kumar Yadav Junior Engineer has joined in Power Grid on 15.07.2009 as a Diploma Trainee (Electrical) and regularized as Junior Engineer on 15.07.2010. He has been posted at Gwalior since the day of joining in company and his tenure of service at Gwalior (M.P) is approximately 12 years. He further stated Master Nikhil Yadav, age 15 Yrs, S/o. Shri Rajesh Kumar Yadav is suffering from Duchenne Muscular Dystrophy (DMD) and taking treatment at Sir Ganga Ram Hospital, New Delhi which is approximately 344 Km from Gwalior, which is evident from the medical records & claims details.

ii) Shri Rajesh Kumar Yadav has been transferred to Nasik, Vide Office Order No. 22/2021 dated 24.03.2021. The date of relieving of the Complainant-employee was extended till 01.06.2021 considering his request and again extended till 03.07.2021 due to present COVID-19 pandemic situation.

iii) The respondent further stated that request for re-consideration of his transfer the complainant has been working in the same location since his joining and completed 12 years of service at Gwalior. He has been transferred to Nashik which is near to Mumbai, where many multi-specialty empanelled hospitals by Power Grid are available for the treatment. Shri Rajesh will be able to avail treatment in any of the Multi-Specialty Hospitals in Mumbai for any ailments according to his requirement. They stated that the travelling distance to reach Mumbai from Nashik is approximately 166 KM which is lesser than the distance between Gwalior & Delhi from where he is currently taking medical treatment for his son.

iv) The respondent is unable to consider his request for cancelation of transfer as mentioned above. The management was constrained to transfer him within the region purely as an administrative action.

4. The complainant filed his rejoinder dated 03.08.2021 and submitted the following facts:-

i) The complainant joined Power grid on 15.07.2009 as Diploma (Trainee) at Gwalior Sub-Station and on regularized as Junior Engineer in Power grid on Dated 15.07.2010. During his posing at Gwalior Sub-station, he completed 10 years smooth service in the Transmission Line Maintenance Department from 15.07.2010 to 28.02.2019, after which he was transferred to the Substation Maintenance Department from dated 01.03.2019. The complainant further submitted that many employees have been working at the same place for more than 12 years either in normal working condition or on account of any other special case like caregiver of a disabled dependent or any other special requirement by the department.

ii) The complainant further stated that the Govt. of India has also exempted such employee, who is the caregiver of disable child/dependent from the regular practice of transfer/rotation transfer as per DOP&T Circular No. 42011/32014 dated 08.10.2018 to avoid the problems caused and adverse effect of new environment on disable person. The complainant stated that his son is suffering from the rare disease Duchenne Muscular Dystrophy (DMD), which is a progressive muscle degeneration due to which the affected child has to face a lot of problems in all daily activities day by day.



5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 18.08.2021. The following were present:

- i) Shri Rajesh Kumar Yadav– Complainant
- ii) Shri Satish Chandra, Executive Director (HR) – Respondent

**Observation / Recommendations:**

1. Complainant submits that he is working in Respondent establishment since 2009. He is posted in Gwalior substation since 2009. By order dated 24.03.2021 Complainant was transferred to Nashik. Complainant submits that his son is divyang with Muscular Dystrophy, his transfer to Nashik will adversely affect the rehabilitation process of the divyang dependant son. He has prayed before this court either to cancel the transfer orders dated 24.03.2021 or if it is absolutely necessary to transfer him then he may be transferred to either Agra, Lucknow or New Delhi.

2. Respondent submits that Complainant is posted at same location, i.e. Gwalior since he joined Respondent establishment in 2009. Hence, after expiry of 12 years his transfer is necessary. Further, Respondent submits that it provides medical facilities to its employees in Nashik hence, rehabilitation of divyang son shall not be adversely affected.

3. During online hearing, Respondents agreed to post the Complainant to his place of choice subject to availability of vacancies. Though assurance forwarded by the Respondent is positive, this court is inclined to delineate various statutory provisions and guidelines.

4. 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.

5. 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

6. 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.

7. 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.

8. 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.

9. 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

10. 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 exigencies, 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

11. 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.

12. 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.

13. 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

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

15. 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

16. 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.

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

18. 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.

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

20. 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.

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26. 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.

27. 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'.

28. 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.

29. 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

30. 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.

31. 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.

32. This Court recommends that the Complainant shall be posted to a place of his choice, which has been assured by the Respondent.

6. This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 16.09.2021



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: 12784/1022/2021 | R29070

Complainant : Major Gautam Joglekar  
Manager-Security  
Bank of Baroda, Indore Region  
R/o 97 Kalindi Kunk, Pipliyahana,  
Indore-452016  
Mobile No : 08818884360  
E-mail : [maj.gautamjoglekar@gmail.com](mailto:maj.gautamjoglekar@gmail.com)

Respondent : General Manager, HRM,  
Bank of Baroda  
Baroda Corporate Centre  
C-26, G-Block, Bandra Kurla Complex,  
Bandra (E), Mumbai-400051  
E-mail : [hrm.bcc@bankbaroda.com](mailto:hrm.bcc@bankbaroda.com)  
[gm.hrm.boc@bankofbaroda.co.in](mailto:gm.hrm.boc@bankofbaroda.co.in)

### GIST OF COMPLAINT:

The complainant Major Gautam Joglekar, Ex-Army Officer presently employed with Bank of Baroda (Govt. of India Undertaking) as Manager-Security. He joined bank at Corporate Office, Mumbai in March 2017 and was subsequently transferred to Regional Office, Indore in July 2018.

The complainant stated that his son Master Amogh Joglekar, aged 12 years is Mentally Retarded with 75% Disability. He requires constant palliative care of both parents as he is unable to carry out very basic daily activities like eating, bathing and toilet. From time to time he suffers from bouts of violent tantrums and need to be controlled through physical restraints. Presently his son is undergoing sensory integration therapy at home as all Therapy Centers are closed due to Pandemic situation (as sensory integration therapy requires physical touch)

The complainant received transfer order on 29<sup>th</sup> June 2021 from Indore to Ahmedabad, accordingly. The complainant accordingly submitted representation to cancel/defer his transfer order with detailed explanation of his problem.

The complainant further stated that his request was rejected by General Manager, HRM on 6<sup>th</sup> July 2021 giving reason that post of Manager-Security is a 'Sensitive Appointment' and requires rotational/routine transfer.

Therefore, the complainant is requested for cancellation of routine Transfer Order (Indore to Ahmedabad) based on under mentioned facts:

i) Being an Ex-Army Officer I have served in difficult areas, Field Areas, Counter Terrorist Operations in Kashmir and served my Nation wherever required and have never shied away from duty.

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E-mail: [ccpd@nic.in](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://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)

ii) It is very difficult to identify and recreate whole plethora of social support system, Medical and Health facilities, Sensory Integration Therapist and moreover nurturing environment for the Mentally Retarded Child with such frequent relocations and disruptions.

iii) The Transfer Order is initiated with vengeance and mala fide intentions to satisfy personal grudge and to create distress for the parent, knowing fully well that such an act will cause anguish to the Disabled Child; In this regard it is pertinent to mention that all details, Medical Reports of my Sons disability is already uploaded in Banks Human Resource Database (HRNES System); responsible Human Resource Manager of Bank initiating Transfer Orders is fully cognizant of these details It is also Pertinent to submit that there is Never or any Administrative action , Disciplinary Enquiry pending or initiated against me during my Service.

2. The matter was taken up with the Respondent vide letter dated 19.07.2021 under Section 75 of the RPwD Act, 2016.

3. In response, respondent Shri Prakash Vir Rathi, Chief General Manager (HRM) vide his letter dated 28<sup>th</sup> July 2021 submitted the following facts:

i) Major Gautam Joglekar joined the Bank's services as Manager (Security) on 20.3.2017 and was posted at Baroda Corporate Centre, Mumbai till 01.7.2018 i.e. less than a year.

ii) Thereafter, on favourable consideration of his request, Major Joglekar was transferred to Indore Region from 2.7.2018 to 17.7.2021 i.e. 3 years.

iii) Major Joglekar has also been promoted to Middle Management Grade/Scale III in the recently concluded exercise for promotion of 2021-22.

iv) In terms of CVC guidelines, employees occupying sensitive positions are required to be strictly rotated after every two/ three years to avoid developing vested interests and as a preventive vigilance measure. Positions associated with Security function are classified as a sensitive post. It is further submitted that due to their specific job role, the position of Security Officers are restricted to administrative offices of the Bank viz. Regional Office, Zonal Office, Head Office & Corporate Office.

vi) Therefore, looking to the fact that Major Joglekar has completed three years tenure in his posting at Indore besides being promoted as Senior Manager necessitating assignment of higher responsibilities commensurate with the grade, the Bank decided to post him at Ahmedabad Zone which is a larger centre having adequate facilities for rehabilitation of Persons with Disabilities.

3. In response, the complainant Major Gautam Joglekar, in his rejoinder dated 04.08.2021 submitted the following facts:

i) Request Posting to Indore region was carried out without any precondition of specific time duration i.e. my transfer to Indore in July 2018 was issued without any time duration as contended by the respondent from 02/07/2018 to 17/07/2021.

ii) The transfer order from Indore to Ahmedabad was issued on 29 June 2021 and the Result of Promotion Exams from Scale-2 to scale-3 was declared on 22 July 2021; this is quite amusing and curious fact as how preemptive order was issued keeping in mind an expected outcome which itself is probabilistic; it adds a mysterious under current to whole matter.

iii) The complainant stated that his son is having Mental Retardation (ID: Non Verbal, 75% Disability), This is permanent disability and there is no known medical treatment



available for this condition the intensity of the disability can be gauged from the fact that he need to be fed, toilet cleaned, bathed by others and kept in physical restraints when he gets physically violent. Only treatment prescribed is Sensory integration, Speech Therapy and Behaviour therapy along with antipsychotic medication to control violent aggression.

The complainant is once again requested to Hon'ble Court to cancellation his transfer order and allow him to serve the bank at Indore for at least 2 more years.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 24.08.2021. The following were present:

- i) Shri Gautam Joglekar – Complainant
- ii) Shri C.M. Tripathi, Head HR, & – Respondent  
Captain Deepak Murari, Chief Security Officer

**Observation / Recommendations:**

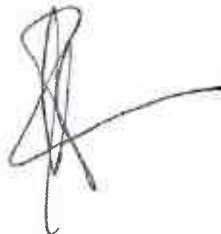
1. This court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and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

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

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

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

- a. Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- b. non-discrimination;



- c. full and effective participation and inclusion in society;
  - d. respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
  - e. equality of opportunity;
  - f. accessibility;
  - g. equality between men and women;
  - h. respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.
4. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.
5. Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.
6. Issues related to transfer and posting to divyang employees may be divided into three categories -:
- a. Posting of divyang employee at native place,
  - b. Exemption from routine transfer of divyang employee,
  - c. Posting of employee who serves as care giver of divyang dependant.

#### STATUTORY PROVISIONS AND GUIDELINES

7. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.
- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
- d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.

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

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

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

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

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

#### ANALYSIS OF THE PROVISIONS & GUIDELINES

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and



objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

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

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

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

#### PRESENT CASE

29. Complainant submits that he joined Respondent establishment in year 2017. Initially he was posted in Mumbai Office. In July 2018, he was transferred to Indore office. Transfer Order was issued on 29.07.2021 to transfer the Complainant from Indore to Ahmedabad. He further submits that he has forwarded several representations against transfer to the concerned authority within the Respondent establishment, which were rejected. Son of the Complainant is 12 years old and Intellectually Disabled – 75%. He needs Complainant's support even to carry out basic daily activities like, eating, bathing etc. He is also undergoing Sensory Integration Therapy at home and as well as at Therapy Centres. Complainant submits that his transfer shall hinder therapy process of divyang son.

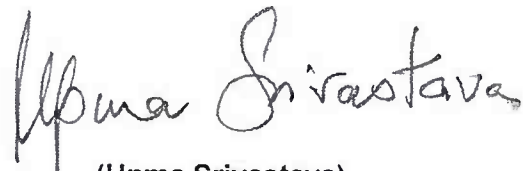
30. Respondent submits that in year 2018 he was transferred from Mumbai to Indore on request. Complainant was promoted to Scale 3 from Scale 2. Considering the increased level of responsibilities, he was transferred to Ahmedabad office. As per CVC guidelines every officer occupying sensitive position are required to be strictly rotated/transferred so that they do not develop vested interest. Positions associated with Security functions are classified as 'Sensitive' posts. Complainant is posted in Indore since last 3 years. He has been transferred to Ahmedabad where rehabilitation facilities for PwDs are adequate.

31. Complainant countered the reply of the Respondent by submitting that CVC guidelines instruct public sector banks to identify Sensitive Posts, accordingly Respondent by circular letter dated 03.11.2020 identified Sensitive Posts. As per the letter, positions associated with procurement and payment to vendors are recognized as sensitive. Since Complainant's post is not related to procurement or payment hence his post is not sensitive. Further he has submitted list of 10 other security officers who are posted at same location for more than 3 years.

32. Complainant has sought relief from this court to extend his posting in Indore for one more year. Complainant is not seeking posting in Indore for rest of his tenure. Case of the Complainant squarely falls within the ambits of O.M. dated 06.06.2014 and 08.10.2018 and related case laws mentioned above.

33. Considering the fact that Complainant has sought only 1 year extension of posting at Indore this court recommends that the Respondent shall retain the Complainant in Indore for at least 1 more year. Many other officers of the Respondent establishment were also retained at same place in past by the Respondent establishment. His retention will help in systematic rehabilitation of his divyang child, which is main objective behind framing guidelines such as DoPT O.M. dated 06.06.2014 and 08.10.2018.

6. This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 16.09.2021



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: 12708/1022/2021 | R29074

**Complainant:** Shri Deepak Kumar  
Arihant Adita, Teresa 804  
Dhayal Nagar, Pal Gangana Road,  
Jodhpur-842014  
E-mail: [here.deepak.kr@gmail.com](mailto:here.deepak.kr@gmail.com)  
Mob: 08003997578, 09308021822

**Respondent:** The Chairman & Managing Director  
State Bank of India (SBI)  
Central Offices, State Bank Bhawan  
Maidane Cama Road, Nariman Point  
Mumbai-400021  
E-mail: [agmhr.jhojai@sbi.co.in](mailto:agmhr.jhojai@sbi.co.in)

— R29075

### GIST OF COMPLAINT

The complainant Shri Deepak Kumar (Manager, PF ID-6999778), vide complaint dated 16.04.2021 by Email submitted that he is physical handicapped (right upper limb 45%) and presently working in State Bank of India, RBO-I Jodhpur. He joined State Bank of Bikaner and Jaipur in July 2012 as Probationary Officer in scale 1. He was promoted to JMGS II in June 2016. In the year 2017 SBBJ bank was merged with SBI. As per promotion policy he become eligible for promotion to MMGS III in year 2019. The bank conducted written exam in January 2019 and he scored 65 in the same exam. Thereafter he appeared for interview. The final result was declared and he was declared for promotion to scale III.

The complainant further submits that he has appraisal of 100/100 and AAA for all the previous years and PAF scores were to be calculated on based of 2 out of last 3 years. Therefore, in PAF also he would have scored 100/100.

The complainant also pointed out that out of total 116 selected only one PWD employee was promoted to scale III in Jaipur circle in the year 2019.

The complainant further submitted that again he appeared in promotion in year 2020 exam and cleared the written exam and qualified for interview. Same thing happened again and he was declared unqualified after interview.

The complainant also submitted his second grievance regarding transfer and posting of PwD employees. During the merger he applied for transfer to New Delhi or Patna where his family member resides so that he may get proper care when ever required due to his disability and was under extreme ground. But the same was out rightly rejected by the bank. The complainant alleged that there is no special consideration for disabled employees in getting transfer to place of their choice.

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](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://www.ccdisabilities.nic.in)

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

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



Therefore, the complainant has requested to CCPD to instruct bank for considering transfer and posting of PwD sympathically and to provide options in transfer portal to exercise the same.

2. The matter was taken up with the Respondent vide letter dated 22.04.2021 under section 75 of the RPwD Act 2016.

3. In response, General Manager (Network-III), Arvind Kumar Singh, State Bank of India, vide his letter no: HR/2021-22/374 dated 01.06.2021, Inter-alia submitted that the final selection for the stated Promotion Exercise was dependent on composite score achieved in three parameters i.e. Written Test (40%) + Performance Appraisal (40%) + Interview (20%). Based on the above criteria the marks obtained by Shri Deepak Kumar were less than the cut-off marks for that Promotion year. The allegation made by Shri Deepak Kumar cannot be substantiated. CDS grades are awarded based on performance of the officer vis-à-vis their cohorts. Further, an officer has at his disposal an entire Financial Year to verify the parameters on which CDS score shall be awarded. Any changes/amendments, if needed, are permitted on approval of respective Controllers. On the issue of transfer, respondent submits that Inter Circle Transfer requests are lodged on a portal maintained and managed by Corporate Centre, Mumbai. Transfers are carried out based on seniority of application i.e. the date when it is applied. Further, manual applications submitted by officers on extreme compassionate grounds are treated on individual merit and based upon the gravity of reasons transfer is recommended for approval at Corporate Centre, Mumbai.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 19.07.2021. The following were present:

- i) Shri Deepak Kumar - Complainant
- ii) Shri Suresh Kumar Sharma, Chief Manager (Law), & – Respondent  
Shri Ashutosh, Jaipur, Circle

#### **Observations & Recommendations:**

1. Two issues which are indispensable to be addressed are that of 'Reasonable Accommodation' and Transfer of divyang employees

#### **REASONABLE ACCOMMODATION**

2. 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.

3. 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."*

4. 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.
5. 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.

6. This Court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.
7. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfil obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were
  - a. To fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,
  - b. To create barrier free environment for Persons with Disabilities,
  - c. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons
8. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –
  - (a) respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
  - (b) non-discrimination;
  - (c) full and effective participation and inclusion in society;
  - (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
  - (e) equality of opportunity;
  - (f) accessibility;
  - (g) equality between men and women;
  - (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.





9. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.
10. 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

11. 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 exigencies, 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

12. 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.
13. 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.
14. 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

15. **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.
16. 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
17. 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.
18. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?
19. 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.
20. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?
21. 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.
22. 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.

23. 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.
24. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.
25. 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.
26. **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?
27. 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 helps 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.
28. 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'.

29. 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."

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**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.

30. 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

31. 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.

32. 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

33. In the present case, Complainant who is employee in Respondent establishment appeared in promotion exam in January 2019. He scored 65 marks out of 100 in written exam and was called for interview. In interview he was given less marks and hence could not qualify. Complainant alleges that similarly other Divyang employees were denied promotion, though their Annual Performance Score is Good. To support his contention Complainant submits that his appraisal is 100 out of 100 and AAA in previous years. Similarly in 2020 he was given less marks and he failed to qualify promotion exam.
34. Relating to issue of transfer, Complainant submits that when Bank of Bikaner merged with State Bank of India, he applied for New Delhi or Patna as preferred place of posting because family live in these two cities. It was denied. In 2021 transfer application was withdrawn.
35. Respondent submits that Final selection in promotion exam is done on the basis of combined marks scored in written and interview. His marks in interview are less hence could not qualify.
36. On the issue of transfer, Respondent submits that transfer request are decided on the basis of seniority. His turn as per seniority list yet to arise.
37. This court concludes that the Respondent must adopt approach of 'Reasonable Accommodation' and provide relaxation in assessment of divyang employees' performance in interview process. 100 out of 100 in appraisal and AAA ratings are



evidence of good performance of the Complainant despite of physical challenges. Hence, to deny promotion to him and similar divyang employees solely because of less marks in interview reflects non implementation of concept of 'Reasonable Accommodation' by the Respondent establishment.

38. On the issue of Transfer this court concludes that the Respondent shall follow the laws, case laws, rules and guidelines delineated above in letter and spirit.
39. This court recommends that the Respondent shall transfer the Complainant to his native place. Further, this court recommends that the Respondent shall adopt relaxed criterion to assess the performance of the Complainant during interview in accordance with principles of 'Reasonable Accommodation' and shall promote the Complainant on relaxed standards.
6. This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 16.09.2021



## 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. 12572/1014/2021/ **R29076**

### Complainant:

Advocate Meena Kadian,  
D/o Shri Kirpal Singh,  
RZ-74, B-Block, Netaji Lane,  
Near Surakhpur Road,  
Gopal Nagar,  
Najafgarh,  
New Delhi – 110 043

Versus

**Respondent 1:**  
**Union Public Service Commission,**  
(Through the Secretary)  
Dholpur House,  
Shahjahan Road,  
New Delhi – 110 069

**R29077**

**Respondent 2:**  
**Department of Home,**  
(Through the Principal Secretary)  
Govt. of NCT of Delhi,  
5<sup>th</sup> Level, 'C' Wing,  
Delhi Secretariat,  
I.P. Estate,  
New Delhi – 110 002

**R29078**

**Disability :** 100% locomotor

### Gist of Complaint:

Ms. Mena Kadian (Advocate), a person with 100% locomotor disability vide her complaint dated 28.01.2021 submitted that UPSC has ignored the Benchmark Disability (BL) identified for the post of Assistant Public Prosecutor in its Advertisement No. 2-2021 (Vacancy No. 21010211223).

1 | Page

The complainant is disabled by both legs. The complainant submitted that she took the matter with the UPSC vide email dated 24.01.2021. She has requested this Court to direct UPSC to publish a revised advertisement with the necessary amendments.

2. The complaint was taken up with the Secretary, UPSC vide letter dated 28.01.2021 and with the Principal Secretary, Deptt. of Home, Govt. of NCT of Delhi vide letter dated 11.03.2021.

3. The Under Secretary, UPSC vide letter dated 12.02.2021 submitted that the Commission received a requisition dated 05.10.2020 from the Home Department, Govt. of NCT of Delhi for filling up eighty (80) [UR-29, EWS-19, OBC-18, SC-05, ST-09, PH-04). Out of 80 vacancies, 04 vacancies were reserved for PwDs) for the post of Assistant Public Prosecutor in the Directorate of Prosecution under Home Department, Govt. of NCT of Delhi. As per the above requisition received from the Home Department, Govt. of NCT of Delhi, the posts are suitable for (i) Blindness and Low Vision [B-Blindness, LV-Low Vision], (ii) Deaf and Hard of Hearing [HH-Hard of Hearing], (iii) Locomotor Disability including cerebral palsy, Leprosy cured, Dwarfism, acid attack victims & muscular dystrophy [OL-One leg affected (R or L), OA- One arm affected (R or L), OLA-One Leg and One Arm Affected, LC-Leprosy cured DW-Dwarfism, AAV-Acid Attack Victims] and (iv) Multiple disabilities from amongst persons under clauses (i) to (iii).

In view of above, the candidates of only above mentioned subcategories of PwDs were allowed to submit online applications. Hence, the grievance pertaining to suitability of the post for any particular or multiple



subcategories can only be considered and redressed by the indenting Department, i.e. Home Department, Govt. of NCT of Delhi and the Commission has no role in the matter as it has advertised the posts on the basis of information / requisition submitted by the Home Department, Govt. of NCT of Delhi.

4. The Under Secretary, UPSC vide letter dated 16.06.2021 has enclosed letters dated 24.02.2021 and 12.02.2021 written by them to the Deptt. of Home, Govt. of NCT of Delhi giving comments of the UPSC regarding applicability of the Government e-gazette CG-DL-E-13012021-224370 dated 04.01.2021 in respect of Specific Learning Disabilities in the context of Advt. No.02/2021 issued by UPSC on 23.01.2021 for recruitment to the post of Assistant Public Prosecutor.

5. The complainant vide her rejoinder vide email dated 17.02.2021 submitted that the Respondent's comments are wrong and denied. She submitted that it is a clear discrimination among sub-categories of PwD when the specific disability, identified for the above said post as benchmark disability by M/o SJ&E has been ignored in the above said post. She submitted that even the Home Department of NCT of Delhi cannot be allowed to ignore the benchmark disability identified by the Ministry of Social Justice and Empowerment and violate the RPwD Act, 2016. She further submitted that if the grievance pertaining to the above said matter can only be considered and redressed by the Home Department, Govt. of NCT of Delhi, then being the front fact of recruitment process it is the duty of respondent to solve the matter with the indenting department.

6. The Dy. Secretary (Home), Deptt. of Home, Govt. of NCT of Delhi vide letter no. F.11/02/H-DOP/2021/145 dated 27.07.2021 submitted that their Department has already received a complaint from Shri Surya Joshi and Advocate Meena Kadian with regard to the non consideration of the various disabilities for the post of Assistant Public Prosecutor as advertised by UPSC vide Advt. No. 02/2021 as per Gazetted Notification dated 04.01.2021 issued by the Ministry of Social Justice & Empowerment. He submitted that a Committee under the RPwD Act, 2016 for identifying the post of Assistant Public Prosecutor in the Directorate of Prosecution was constituted vide order dated 19.02.2019. After that the Committee vide its minutes recommended the categories of persons with disabilities as per Section 34(1) of RPwD Act, 2016 who are eligible for recruitment against the posts of Assistant public Prosecutors in the Directorate of Prosecution. The Committee after considering all the relevant factors relating to the role and responsibilities of APPs GNT of Delhi identified the following categories ;

- a) Blindness and Low Vision
- b) Hard of Hearing (with not less than 60% with assistive device)
- c) Locomotor Disability (OA,OL) including Leprosy cured, Dwarfism and Acid Attack Victims and
- d) Multiple Disabilities from amongst persons (a) to (c).

The Respondent further submitted that the matter was referred to Law Department and Services Department and it has been advised that "the appropriate Government in case of Government of National Capital Territory of Delhi is different than the Appropriate Government in case of Central

Government. The Expert Committee constituted by their Government has independently identified the PH requirement for the post of Assistant Public Prosecutor in Directorate of Prosecution, Delhi. The above position show that the advertisement issued in case of Assistant Public Prosecutor in Directorate of Prosecution, Delhi was in conformity with the policy decision taken by the Appropriate Government of NCT of Delhi. The Respondent submitted that the role and responsibilities of APPs as identified by the Central Government is distinct from the role and responsibilities of APPs of GNCT of Delhi as the APPs are required to regularly appear before the Courts of Metropolitan Magistrates in Delhi to prosecute cases, examine witnesses, tender legal opinion, appear at various stages including bail, custody, case property hearings, impart training in Police Training Colleges, scrutinize charge sheets, render opinions and advise police on regular basis. He submitted that the present recruitment process is as per law.

**Observation/Recommendations:**

7. This Court is not in agreement with the view of above. The identification of posts by D/o Empowerment of Persons with Disabilities is valid for entire country and all organisations and has to be followed until and unless specific exemption is sought by the Deptt./Organisation. There can be no deviation from this Circular. However, as the matter pertains to NCT of Delhi, the Commissioner for Persons with Disabilities, Govt. of NCT of Delhi is requested to take further necessary action in the matter. The following documents pertaining to the case is enclosed:





- i) The complaint dated 28.01.2021.
- ii) UPSC's submissions vide letter dated 12.02.2021 and 16.06.2021
- iii) Dy. Secretary (Home), Govt. of NCT of Delhi's letter 27.07.2021 and
- iv) Complainant's rejoinder received vide email dated 17.02.2021

Dated: 20.09.2021

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Copy to :

229079

The Commissioner for Persons with Disabilities, - along with the case  
Office of the Commissioner for Persons with Disabilities, documents.  
Govt. of NCT of Delhi,  
25-D, Mata Sundari Road,  
Near Guru Nanak Eye Center,  
New Delhi-110002

Encl : As above



सत्यमेव जयते

1257

## 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: 12766/1022/2021

Complainant : Shri Ajay Singh Shekhawat

LASCAR

815 CETC C/o 56 APO

Mobile No : 09784002452

E-mail : [as2891554@gmail.com](mailto:as2891554@gmail.com)

Respondent : The Coordinate & Pers Directorate/E1A

Engineer-in Chiefs Branch

IHQ of MoD (Army)

Kashmir House, Rajaji Marg, DHQ PO

New Delhi-110011

### GIST OF COMPLAINT

शिकायतकर्ता श्री अजय सिंह शोखावत पद- लशकर, दिनांक 06 सितंबर 2013 में 55 प्रतिशत दिव्यांगजन कोटे से CETC C/o 56 APO में कार्यरत है। शिकायतकर्ता का आगे कहना है कि उन्हें जो भी कार्य दिया गया उसे उन्होंने पूरी निष्ठा और ईमानदारी के साथ निभाया और भविष्य में भी अपने कर्तव्य को पूरी निष्ठा व ईमानदारी के साथ निभाता रहेगा।

शिकायतकर्ता का आगे कहना है कि दिव्यांगता के कारण दिनचर्या में काफी परेशानी का सामना करना पड़ रहा है तथा उनके माता पिता की काफी उम्र ज्यादा होने के कारण अधिकतर समय बीमार व अस्वस्थ रहते हैं जिनकी देखभाल हेतु घर पर किसी का होना आवश्यक होता है अभी मेरी पत्नी उनकी देखभाल कर रही है लेकिन शिकायतकर्ता दिव्यांग होने के कारण उन्हें भी अपनी पत्नी के साथ रहने की काफी आवश्यकता है।

शिकायतकर्ता ने आगे कहा है कि इन परिस्थितियों के चलते वह अपनी ड्यूटी व परिवार के बीच का तालमेल मिला पाने में सक्षम नहीं है जिन कारणों से उन्हें अपने घर के नजदीक स्थानान्तरण चाहिए। शिकायतकर्ता ने स्थानांतरण के लिए दो बार प्रार्थना-पत्र दिया था लेकिन अभी तक कोई भी निर्णय नहीं लिया गया है।

अतः शिकायतकर्ता ने विनम्र निवेदन किया है कि उनकी समस्याओं को ध्यान में रखते हुए उन्हें निम्न स्थानों में से किसी एक स्थान पर स्थानांतरण करवाने की कृपा की जाए।

1. झुन्झुनू 2. जयपुर 3. सीकर

2. The matter was taken up with the Respondent vide letter no: dated 08.07.2021 under section 75 of the RPwD Act 2016. But despite reminder dated 23.07.2021 and 10.08.2021, the respondent did not submit any reply.

3. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 14.09.2021. The following were present:

- i) Shri Ajay Singh Shekhawat - Complainant
- ii) Respondent - None

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

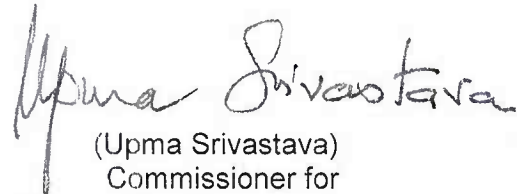
E-mail: [ccpd@nic.in](mailto:ccpd@nic.in) ; Website: [www.ccdisabilities.nic.in](http://www.ccdisabilities.nic.in)

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

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

**Observation /Recommendations:**

- i) The Court received a letter dated 14.09.2021 from the respondent informing that the complainant has already been posted to one of his choice stations on 03.09.2021. The complainant confirmed the position in the hearing.
  - ii) As the grievance has been redressed, there is no need of further intervention in the matter.
4. The case is accordingly disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 28.09.2021





सत्यमेव जयते

127

## 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: 12763/1022/2021**

Complainant : Shri Rajib Tewary, JHAA  
CGHS Bangalore  
Mobile No: 07001603421  
E-mail : [Rajib.tewary@cghs.nic.in](mailto:Rajib.tewary@cghs.nic.in)  
Respondent : Additional Director,  
Central Government Health Scheme  
3<sup>rd</sup> Floor, E-Wing, Kendriya Sadan  
Koramangala, Bangalore-560034  
E-mail : [cghsbng-ka@nic.in](mailto:cghsbng-ka@nic.in)  
Contact No : 080-25539058  
Fax No : 080-25500899  
The Director (CGHS)  
Directorate General of CGHS-II  
Ministry of Health and Family Welfare  
A-545, Nirman Bhawan, New Delhi-110011

-R29464

-R29465

-R29466

### GIST OF COMPLAINT:

The complainant Rajib Tewary is a person suffering from 45% Physical Disability. The Complainant is currently working as Junior Health Administrative Assistant (earlier called as LDC) under CGHS Bangalore, Ministry of Health and Family Welfare. The complainant hometown is Asansol near Kolkata, West Bengal which is almost 2000 km far from his workplace Bengaluru.

The complainant applied for transfer near his native place (Kolkata/Ranchi) for the following reasons:-

- The complainant has been appointed under PWD (HH) Quota and is very difficult for him to survive alone without his family. The complainant appointment is 22.06.2018.
- The complainant is only son of his parents and there is no one to look after them in their old age.
- The complainant family along with two small children are in his hometown that needs his presence.
- The complainant is managing his family and his work has been really difficult for him due to this distance problem and current National medical emergency due to this pandemic.

The complainant has requested CCPD to transfer him from Bengaluru to Kolkata/Ranchi which is the nearest place to his home town so that he can focus on his work and also be there for his parents as and when needed.

2. The matter was taken up with the Respondent vide letter dated 08.07.2021 under Section 75 of the RPwD Act, 2016.

3. In response, respondent Dr. M. Rewati, Additional Director, CGHS Bengaluru vide their letter dated 07.08.2021 submitted the following facts:

i) As per Section 20(5) of the RPwD Act 2016, CGHS Bangalore has framed policies for posting and transfer of employees with disabilities issued vide notification no. A 1(28)/CGHS/BNG/2276 dated 30.07.2021.

ii) Instructions and guidelines issued under DoPT OM No. 36035/3/2013-Estt. (RES) dated 31.03.2014 are being followed in CGHS Bangalore.

iii) The complainant was appointed to the post of LDC (redesignated as JHAA) in CGHS Bangalore on 22.06.2018 against PwD (HH) quota through SSC CHSL 2016. As per para 5 of offer of appointment issued vide letter no. Admn, 1(10) CGHS/2018/3519 dated 22.06.2018, 'you will be liable to be posted and transferred anywhere in India in public interest. However, your request to any other city from CGHS Bangalore will not be considered under any circumstances during your probationary period of 2 (two) years.

iii) CGHS Bangalore is an attached office under Ministry of Health & Family Welfare, New Delhi and has no powers to issue intercity Transfer/Posting Orders. Shri Rajib Tewary, JHAA has successfully completed probationary period of 2 years w.e.f. 22.06.2020 issued under OM No. A.1 (13) 2020/CGHS/990 dated 31.03.2021. the first request letter dated 15.07.2020 for transfer was received from Shri Rajib Tewary, was forwarded to the Directorate General of CGHS, new Delhi vide letter No. 4-2/PF-109/LDC/2020/CGHS/BNG/ADMN/1886 dated 22.07.2020

iv) The second request letter dated 15.04.2021 was forwarded vide letter no.4-2/PF-109/JHAA/2021/CGHS/BNG/ADMN/1612 dated 20.05.2021 duly recommended by this office.

The respondent further submitted that requests of complainant working in various CGHS units for their transfer were considered in the meeting of the transfer committee held on 10.03.2021. In the meeting, requests of 4 JHAAs seeking transfer from CGHS Bangalore to other CGHS units including request of Shri Rajib Tewary were considered. However, transfer requests of all the 4 candidates were rejected by the Committee due to administrative reasons as more than 50% posts of the JHAAs were vacant in CGHS Bangalore. CGHS Bangalore is already facing acute shortage of clerical staff, by considering these requests for transfer out of Bangalore will lead to suffering of smooth functioning in CGHS Bangalore especially in Covid pandemic scenario. It is also submitted that transfer request dated 15.04.2021 in respect of Shri Rajib Tewary has also been received in this ministry and same will be considered in the next meeting of the transfer committee in due course.

The respondent submitted that present incumbency position of JHAAs in CGHS Bangalore as on 04.08.2021 are as under:

JHAA (Junior Health Administrative Assistant)

Sanctioned Strength = 19

In Position = 09

Vacancy = 10

The respondent stated that CGHS Bangalore has framed Equal Opportunity Policy and also nominated a Staff Grievance Redressal Officer to look into the complaints received from Staff of CGHS Bangalore including employees with disabilities.

4. The complainant filed his rejoinder by email dated 19.08.2021 and submitted the following facts:-

i) The complainant received a revised reply furnished on behalf of Additional Director, CGHS Bangalore and director, CGHS New Delhi regarding his complaint.

ii) The complainant submitted that in the present scenario of CoVID-19 pandemic, the complainant not sure when the next transfer committee will meet.

iii) The complainant joined government service as LDC (presently JHAA) in the age of 33 years in 06.2018 under PwD quota.

iii) As per the transfer policy of the ministry he would be placed, junior most in the cadre in the event of transfer on own request.

iv) The delay in his transfer would cause further delay in the promotional avenues of the Department. The complainant would be placed junior most in the Seniority list of JHAA at the place of him new posting.

The complainant once again requested to Hon'ble court that his transfer request should be treated as a special case by the Office of CGHS the Ministry of Health and Family Welfare and without delay the office should issue transfer order and release him.

5. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 14.09.2021. The following were present:

- i) Shri Rajib Tiwary - Complainant
- ii) Dr. M. Revathi, Addl. Director, CGHS Bangalore – Respondent

### **Observation / Recommendations:**

1. This Court is inundated with the Complaints related to the issue of transfers. 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,

135

which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

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

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

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

### PRESENT CASE

29. Complainant submits that he was posted in Bengaluru. His Hometown is Kolkata. He applied for transfer to Kolkata, which is his native place but the same was denied.

30. Respondent submits that the Complainant applied for transfer on 22.06.2020 and 31.03.2021. Since CGHS Bangalore is attached office and does not have powers to issue inter-city transfer Orders, his transfer applications were forwarded to Directorate General of CGHS, New Delhi. Respondent has recommended transfer of the Complainant. Final decision is yet to be taken by D.G. CGHS, New Delhi.

31. Case of the Complainant squarely falls within guidelines issued in O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T and delineated above. As per the O.M. divyang employees must be given preference in transfer and posting. Respondent is bound to implement the guidelines. Objective of this rule is to provide a suitable environment to divyang employee wherein the employee can perform his job efficiently without being impeded by the natural barriers which naturally comes in daily life of such employee.



32. This Court recommends that the Respondent shall strongly recommend transfer of the Complainant to place of his choice and shall forward copy of this Order to the office of Director General of CGHS, New Delhi for effective implementation of this Order.

33. This case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 28.09.2021



137

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## न्यायालय मुख्य आयुक्त दिव्यांगजन

## COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)

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

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

भारत सरकार/Government of India

Case No. 12793/1031/2021

## Complainant:

Ms. Meena Kadian,  
R/o Chullayan Pana, V.P.O. Beri,  
Tehsil Beri, District-Jhajjar (Haryana),  
Email: [meena.kadian@live.com](mailto:meena.kadian@live.com); Mobile: 8587085406

- R29467

## Respondent:

Registrar,  
Central University of Haryana,  
Village Jant Pali,  
District-Mahendergarh - 123031 (Haryana)  
Email: [registraroffice@cuh.ac.in](mailto:registraroffice@cuh.ac.in)

- R29468

## 1. Gist of Complaint:

1.1 The complainant, Ms. Meena Kadian, F-35, a person with 100% Locomotor Disability (both lower limbs) initially had filed this complaint on 20.08.2019 before the State Commissioner for Persons with Disabilities, Government of Haryana regarding non-implementation of 5% reservation policy in admission to Ph.D. and denial of her admission to Ph.D. in disability category for the Academic Session 2019-2020. After hearing the complaint [Case No.111/19], SCPD Haryana decided to transfer the case to this Court on 02.07.2021 as the respondent being a Central University had disputed the jurisdiction of SCPD Haryana and only the Chief Commissioner for Persons with Disabilities, Government of India has the jurisdiction to decide the case.

1.2 She has alleged that the respondent Central University of Haryana (CUH) had not notified in the Information Bulletin for Academic Session 2019-2020 a single seat for students with disabilities for admission to Ph.D. under disability quota. She had applied for admission to Ph.D Law under PwD category and even after qualifying the interview, the respondent denied to provide interview and told the complainant that there is no reservation for PwD category in Law Department.

(Page 1 of 4)

1.3 The complainant further submitted that the total intake of the Ph.D. Programme in Academic Session 2019-20 was 98 in CUH, which means 5 seats should have been allotted to PwD category. The CUH should disclose how many candidates and in which department has been admitted in Ph.D Programme 2019-20.

## **2. Submissions made by the Respondent**

2.1 The respondent filed their reply dated 03.08.2021 and submitted that 5% reservation is admissible to PwD candidates in admission in Central University of Haryana (CUH). Due to small number of seats offered by the Departments for M.Phil./Ph.D. admission, there was administrative difficulty in providing 5% reservation department-wise. Hence, the matter was put up before the Standing Committee (Admissions) which is having one member as representative of PwD category.

2.2 In pursuance of the resolution passed by the Standing Committee (Admissions) in its meeting held on 08.10.2020, the Central Admission Advisory Committee 2020-21 consisting of one member as representative of PwD category, prepared the Seat Matrices in which 5% reservation to PwD candidates has been provided taking University as a single unit and the seats were allotted to the Departments alphabetically to implement the 5% reservation to PwD candidates. CUH offered a total of 36 seats in M.Phil. and 221 seats in Ph.D. A total of 02 seats in M.Phil and 11 seats in Ph.D. were reserved for PwD candidates and the seats were allotted to the departments in alphabetical order to implement the reservation in Research Programmes.

2.3 The Department of Law, CUH offered 07 seats for Ph.D. Programme (03 UR, 01 SC, 01 ST, 01 OBC and 01 EWS) IN Academic Session 2019-20. As per the provisions of RPwD Act, 2016, 5% of 07 seats can be calculated as 0.35 seats i.e. even less than half could be reserved from PwD candidates. In view of the above, no seat was advertised under PwD category in the Department of Law for the Academic Session 2019-2020.

2.4 Respondent also submitted that similar controversy had arisen before the Court of Chief Commissioner for Persons with Disabilities in Case No.12456/1031/2020 – Shri Bhadur Lal Vs Central University of Haryana, wherein this Court had held that no further intervention is required in this matter and the case was closed.

## **3. Submissions made in Rejoinder**

### 3. Submissions made in Rejoinder

3.1 Complainant in her Rejoinder dated 16.08.2021 denied the reply and stated to be wrong and misleading as the reply is based on the data of Academic Session 2020-21 but the instant case pertains to the Academic Session 2019-2020 where there were no provisions made by the respondent for the implementation of RPwD Act, 2016 in Ph.D. admissions. All the provisions of reservation for PwD category were made on the recommendations of the Standing Committee (Admissions) vide Resolution No.14 in its 31<sup>st</sup> meeting held on 08.10.2020, i.e. after one year of the pursuance of this case (before the SCPD Haryana). So at the time this conflict arose, there was no reservation provided for PwD category in Ph.D. admissions.

3.2 As per the printed Information Bulletin of the respondent, seats allotted to all the Departments were bifurcated only under UR, SC, ST, OBC and EWS, with a Note that – **“PWD reservation shall be provided as per Government of India rules. The seats reserved for the PWD shall be separately notified within the department-wise intake capacity as given above.”** The respondent had not notified a single seat for PwD students in the Academic Session 2019-2020 for admission to Ph.D. The respondent was, therefore, on fault during Academic Session 2019-2020 for Ph.D. admissions and complainant was denied her fundamental right of equal opportunity in studies.

4. **Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **14.09.2021**. The following were present:

- (1) Ms. Meena Kadian, complainant
- (2) Dr. Pardeep Singh, Incharge – Legal Cell, for respondent

### 5. Observation/Recommendations:

5.1 Both the parties were heard.

5.2 The grievance of the complainant pertains to not implementing reservation for persons with disabilities in the Ph.D. seats of the respondent University in the year 2019. She expressed that although she had qualified under unreserved category, yet she was not given a seat as she figured in the waiting list. If the University had applied the reservation as per the Rights of Persons with Disabilities Act, 2016 she would have been definitely selected. She further express that she again applied in the year 2020, but she was disqualified by the University. In the year 2020, the University has initiated a system of reservation in which seats were reserved in each department with name starting from letter





A to H and no seats were reserved for departments with names starting from letter L to Z. The complainant is from Law Discipline and there were 25 vacancies which were advertised and not even one was reserved for persons with disabilities, whereas in the Department of History total seats advertised were one which was reserved for persons with disabilities. If this criteria had not been followed, the complainant would have got the Ph.D. seat.

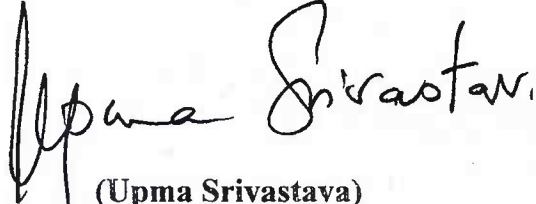
5.3 The respondent admitted that yes they did not apply the principle of reservation in the year 2019, which was a mistake on their part. However, in the year 2020, they have applied the principle of alphabetical order and filled all 25 seats in the Law Discipline.

5.4 This Court does not understand the logic behind this system of applying reservation. Logically reservation should be in those disciplines, where the number of seats is more in number or in other words, the reservation should be in proportion with the number of vacancies. It is clear that if there is only one seat and it is reserved for persons with disabilities, it is highly likely that no person will be available, and reservation would go waste.

5.5 This Court finds the grievance of the complainant genuine. Injustice has been done to her by the University by following no reservation in 2019 and applying an irrational criterion in the year 2020. After lots of deliberations in the matter with the respondent and the complainant, the Court recommends that since there were 25 seats in the Law Department, the University may compensate the complainant by increasing one more seat and adjust the complainant against it. The complainant further expressed that she could reach this Court at a later stage because she first filed her grievance before Haryana State Commissioner, where her complaint was pending for a long time and thereafter a reply was received in this matter that the jurisdiction is of the CCPD, New Delhi. Hence, she has not delayed in filing her grievance and seeking justice. The respondent may adjust the complainant in Law Department for the year 2020.

5.6 The case is disposed off.

**Dated: 28.09.2021**

  
(Upma Srivastava)  
Commissioner  
for Persons with Disabilities



सत्यमेव जयते

141

## 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: 12786/1023/2021**

Complainant: Shri Arpit Singh  
LDC, DGQA Stores Complex  
Ministry of Defence, Kanpur – 208004

—R29469

Respondent: The Secretary (DP)  
Defence Production Department  
Ministry of Defence, Govt. of India  
Room No. 136, South Block, New Delhi – 110011  
E-mail: <sdps@nic.in>

—R29470

Complainant: 100% hearing impairment

### GIST of the Complaint:

प्रार्थी का अपनी शिकायत दिनांक 27.05.2021 में कहना है कि उनकी नियुक्ति जनवरी 2017 में एल.डी.सी. के पद पर दिव्यांग कोटे के तहत नियंत्रणालय गुणता आश्वासन (सामग्री) भंडार निदेशालय, कानपुर कैंट में हुई थी जहाँ श्री राकेश कुमार (स्टोर कीपर) लगातार झूठी एवं भ्रामक सूचना का प्रचार-प्रसार कर उन्हें मानसिक प्रताड़ना दे रहे हैं और कई बार अकेले में बुलाकर जान से मार देने की धमकियाँ देते हैं। प्रार्थी का आगे कहना है कि लगातार फर्जी शिकायतों के कारण उनकी भर्ती से संबंधित प्रक्रिया का एक केस सी.बी.आई., लखनऊ में जाँच हेतु लंबित है।

2. The matter was taken up with the Respondent vide letter dated 15.07.2021 under Section 75 of the RPwD Act, 2016. But despite reminders dated 02.08.2021 & 16.08.2021, no response has been received from the respondent. Therefore, hearing scheduled on 14.09.2021.

**Hearing:** The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 14.09.2021. The following were present:


- Complainant - absent
- Lt. General R.K. Malhotra, DG, DGQA on behalf of respondent

**Observation/Recommendations:**

3. The respondent was heard. They explained in detail that this case was not limited to only Shri Arpit Singh, but includes other 5 persons also who were appointed with him. Due to several complaints to various authorities were received, a Fact Finding Inquiry was conducted in the whole matter of recruitment of these 6 persons and a large number of irregularities were found. At present, the Vigilance Division of the respondent has referred the case to Central Bureau of Investigation (CBI) and Central Vigilance Commission (CVC). A FIR also has been lodged against many persons including the complainant. Though these persons have been reinstated yet CBI investigation is going on in the matter. The respondent further explained that after reinstatement, the matter is still pending in the CAT, Allahabad Bench. Moreover, so far as harassment by an employee is concerned, the complainant should have first approached the competent authority in the organisation and only thereafter filed a complaint in the Court.

4. In view of the position stated above, this Court would not like to make any intervention at present.

5. The case is disposed off.

  
(Upma Srivastava)  
Commissioner for  
Persons with Disabilities

Dated: 28.09.2021