



सत्यमेव जयते

न्यायालय मुख्य आयुक्त विकलांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES
विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No.: 2635/1022/2014

Dated: 23.06.2017
Dispatch No.....

In the matter of :

Shri Tanmoy Kumar Das,
S/o Shri Nirmal Chandra Das,
3 No. Durganagar,
P.O. : Chakdaha,
District : Nadia,
West Bengal – 741 222

.....Complainant

Versus

The General Manager (P)
Office of the General Manager (P),
East Central Railway,
New G.M. Building,
Dighi Kalan, Hajipur,
Bihar – 844 101

..... Respondent No.1

The General Manager (P),
Office of the General Manager (P),
Eastern Railway,
Kolkata – 700 001

..... Respondent No.2

The Divisional Railway Manager (P),
East Central Railway,
Samastipur,
Bihar

..... Respondent No.3

Date of Hearing : 17.04.2017, 17.03.2017 , and 13.02.2017

Present :

1. Shri Tanmoy Kumar Das, Complainant - Present
2. None appeared on behalf of Respondent No.2
3. Shri Vidur Sikka, Advocate for Respondent No. 1 & 3 - Present

ORDER

The above named complainant, a person with 75% visual impairment, filed a complaint dated 12.08.2014 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as 'the Act', regarding his transfer from Eastern Central Railway, Samastipur, Bihar to Eastern Railway Sealdah Division/Kancharapara Workshop.

2. The complainant submitted that he is a permanent resident of Durganagar, P.O.Chakadaha, Distt. Nadia, West Bengal and at present is posted as Helper – II under Sr.

Section Engineer/ Tele/ Samastipur Division in East Central Railway, Bihar. His parents are too old and medically unfit and there is no one to take care of his parents except him. Due to his posting at Samastipur it is impossible for him to take care of his parents. Due to his disability he is facing lot of problems too. He has requested for his transfer to Sealdah Division/ Kancharapara Workshop which is under Eastern Railway and near his native place.

3. The matter was taken up under Section 59 of the Persons with Disabilities Act, 1995, with the General Manager, East Central Railway vide letter dated 16.10.2014 followed by reminders dated 28.11.2014, 04.02.2015, 24.03.2015, 13.05.2015, 04.11.2015 and 14.12.2016.

4. As no reply has been received from the respondent, a personal hearing was scheduled on 13.02.2017.

5. During the hearing the complainant reiterated that railway has recently circulated a Circular according to which the ban which was imposed for 1-5 years for inter railway transfers has been exempted for persons with disabilities in the railways. He, therefore, prayed before the Court to kindly consider his case and pass necessary directions to the respondent.

6. The Advocate appearing on behalf of the railway submitted that he has been authorized by the Eastern Railway to appear in this case. He requires some more time to get the comments from the Eastern Railway. He, therefore, prayed that some more time granted for filing appropriate reply to the complainant.

7. After hearing both the parties, the Court granted time to the respondent for giving a reasonable reply on the application of the complainant to this Court and to the complainant. The next hearing in the case has been scheduled 17.03.2017 at 16.00 Hrs.

8. During the hearing the complainant submitted that Eastern Central Railway is ready to relieve him, but the Eastern Railway is not ready for his transfer near to his native place. The

complainant submitted a copy of comprehensive Transfer Policy exemption from 5 years service condition whereby the Deputy Director Estt (N), Railway Board has given direction to all the General Managers (P) and all Zonal Railways/Production Units stating that it has been considered by the competent authority and in partial modification of Boards letter no. E(O)III-2014 dated 31.08. 2015 that the following categories of Transfers in the case of non-gezzeted staff be exempted from condition of minimum of five (05) years service.

- i) Transfers sought on mutual exchange basis;
- ii) Transfers sought on spouse ground;
- iii) Railway servants who are care-givers to a disabled child and
- iv) Physically handicapped Railway Servants.

9. The Counsel who appeared on behalf Eastern Central Railway submitted that during the last date of hearing inadvertently his presence was recorded for Eastern Railway instead of Eastern Central Railway. Further, he had applied for copies of complaint, documents and Orders on 07.03.2017. Hence he may be given another opportunity to file a detailed reply on behalf of Eastern Central Railway. The representative of Respondent No. 1 & 3 was provided copies of complaint, documents and Orders pertaining to the case during the hearing.

10. The case was adjourned for 17.04.2017 at 16.00 Hrs.

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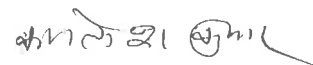
11. During the hearing the complainant reiterated that if he is working as Helper in the Telecom Department under East Central Railway, then why he cannot be transferred in the same capacity to the Eastern Railway.

12. During the hearing the Learned Counsel of Respondent submitted that the matter is beyond the jurisdiction of this Court as the matter falls within the jurisdiction of Central Administrative Tribunal (CAT). As per Administrative Tribunal Act, 1985 'disputed and complaints with respect to recruitment and condition of service of person's appointment to public services and posts in connection with affairs of the Union within the territory of India, should

arise before Central Administrative Tribunal. If the applicant has any grievance, he should approach Central Administrative Tribunal. The complainant has submitted his request for Inter Railway Transfer application vide application dated 29.08.2014 from Samastipur/ECR to Eastern Railway / Kolkata through GM (P)/Hajipur. Eastern Railway/Kolkata has communication its decision vide letter dated 20.01.2016 wherein it has been mentioned that the transfer appeal of the complainant has not been accepted with the remarks that '75% visually handicapped group 'D' staff will be no use in S & T Department. Hence, he will not be taken in S&t Department of SDAH'. The East Central Railway (ECR) has no role in taking decision by Eastern Railway regarding acceptance of non-acceptance of transfer application. ECR has given its willingness to transfer to Eastern Railway (ER). However, Eastern Railway has rejected complainant's application on safety issues/grounds. The present complaint is not maintainable and is liable to be dismissed, as the complainant has concealed material and vital facts from this Court and have further presented a distorted and incorrect version of the facts before this Court and have thereby attempted to misguide and mislead this Court. Further there are no vacancies / posts available in Eastern Railway as stated by them in their letter dated 10.01.2017 according to his disability and he has also submitted in his request for transfer that he shall comply with the rules and regulations and instructions connected with the duties of the post to which he was seeking transfer. Hence he is not entitled for transfer and he may approach CAT for the same.

13. After hearing both the parties, the Court directed Respondent No. 2 to get the complainant transferred near to his home town under the Eastern Railway in the same capacity and allot him work that suits his disability and to submit the compliance report to this Court within two months.

14. The case is accordingly disposed off.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
For Persons with Disabilities