



कार्यालय मुख्य आयुक्त दिव्यांगजन

OFFICE 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 & Empowerment
भारत सरकार/Government of India

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Case No. 15493/1022/2024

In the matter of -

Ms. Deepa Stephen
Nursing Officer
Guru Nanak Eye Center,
Delhi-110002

Vs

The Director
Guru Nanak Eye Centre
Maharaja Ranjeet Singh Marg,
New Delhi-110002

1. Gist of the Complaint

1.1 Ms. Deepa Stephen, a person with 51% locomotor disability who works as a Nursing Officer in the Respondent establishment, filed a complaint dated 26.06.2024 regarding mental harassment and humiliation towards a person with disability by rotational transfer and ordering a constitution of a fresh Medical Board to determine the duties that can be performed by her.

1.2 The Complainant submitted that she suffered an accident on 20.02.2024 resulting in a fracture in her left elbow with soft tissue injury. As per the reports received from the Lok Nayak Hospital and a review report received from the Sant Parmanand Hospital, the Complainant has Osteoarthritis (OA) - a degenerative joint condition and is advised to avoid long-standing hours. The Complainant rejoined her duty on 29.03.2024. The Assistant Nursing Superintendent (ANS) verbally allowed her to work at the DNS Office on a desk job. The Complainant vide application dated 21.03.2024 requested the ANS to continue work at the ANS Office. The application was allowed by the

ANS on humanitarian grounds.

1.4 On 08.05.2024, she was transferred from the Investigation Lab to OPD + ECG, which had a lot of commotion and rush, which makes it difficult for her due to her disability. On a previous occasion, the Complainant while discharging her duties in the OPD had lost balance and suffered minor injuries. The Officiating ANS informed the Director who insisted that the Complainant would be given a wheelchair and threatened her with termination under FR 56 (J).

1.5 She further submitted that the assignment of duties among the Nursing Staff is the responsibility of the Deputy Nursing Superintendent (DNS) and in the absence of DNS, this responsibility is undertaken by the ANS. The Director of the Centre does not get involved in such matters. However, Dr. Kirti Singh took personal interest in her matter, which indicates her malafide against the Complainant. The Complainant also gave a representation to the Grievance Officer on 10.05.2024 but no response was received. Instead, the Administrative Officer, Guru Nanak Eye Centre vide order dated 24.06.2024 constituted a fresh medical board with a term that the board shall determine the duties that can be performed by the Complainant in an eye hospital. In an attempt to prejudice the minds of the board members, the said letter includes the following line:

"....since sister Deepa has refused to do even the OPD and the ECG duty, in an eye hospital (which is very light), it is recommended that a fresh medical may be conducted through special board from GIPMER involving a neurologist, a physician and an orthopedician."

1.7 The Complainant alleged that the act of denying due benefits, insisting on reassessment without valid reasons and instances of humiliation and harassment by the Director, violates the legal rights of the Complainant. She prayed for the following reliefs:-

- (i) Keep the order for medical reassessment dated 25.06.2024 in abeyance and direct the Respondent to rely on the existing disability certificate issued by a competent authority;
- (ii) Ensure that reasonable accommodations are made for the Complainant as per Section 3(5) of the RPwD Act, including assignment to suitable duties in accordance with her current medical condition;
- (iii) Issue a formal apology from the Respondents for the public humiliation and mental harassment inflicted upon the Complainant;
- (iv) Impose appropriate penalties under Section 92 (a) of the RPwD Act, 2016 for the humiliation and harassment endured by the Complainant;
- (v) Take any other action or pass any order as this Hon'ble

Court may deem fit and proper in the interest of Justice.

2. Submission of the Respondent

2.1 The Director, Guru Nanak Eye Centre filed a reply dated 26.07.2024 in the matter and submitted that the present complaint has been made out with malafide intention and its contents are false and frivolous and deserves to be dismissed with costs. She further submitted that on 20.02.2024 the Complainant fractured her left elbow and was also diagnosed with Osteoarthritis (OA). Upon the Complainant's rejoining on 29.03.2024 she was allegedly verbally allowed to work at the DNS Office and help desk job, and the extension of the same was allowed by the approval of the Complainant's application dated 21.03.2024. As per transfer order dated 08.05.2024, the Complainant was asked to report for work at the ECG Room (Ground Floor) and to help in OPD paper work in the afternoon. The Complainant refused to join the designated new posting, citing that her poor health prevents her from working in the new department.

2.2 The Director, Dr. Kirti Singh, considering the non compliance of the transfer order by the Complainant recommended a medical assessment by a Special Board of the G B Pant Hospital.

2.3 The present Complaint has been filed before the Chief Commissioner. However, the provision relied upon by the Complainant is Section 80 (b) which pertains to the State Commissioner.

2.4 The Respondent denied the allegations of public humiliation or harassment of the Complainant and said that the same can be verified from the Nursing Staff who were present during that time. The Respondent also denied the allegation of any threat being issued to the Complainant of termination under FR 56 (J). She further submitted that the assessment recommended by her was not for the purpose of issuing another disability certificate but it was merely to find out the exact nature of work that may be safely undertaken by the holder of the certificate. Lastly she submitted that the injury sustained by the Complainant occurred during her Child Care Leave between 19 and 28 February, 2024 and not during her hospital duty.

3. Submission made in the Rejoinder

3.1 The Complainant in her rejoinder submitted that on the direction of the Respondent for re-assessment of her disability, a medical board was constituted on 25.07.2024. The Complainant appeared before the Board on the same day and the report was issued by the Board on 26.07.2024. The medical board noted as under:-

(i) That it is not under the purview of an Administrative Officer-GNEC to direct the constitution of the medical board regarding the assessment of a patient's disability,

(ii) That the petitioner has already been granted a certificate of 51% disability for Gullian Barre Syndrome (GBS) and thus, there is no need to revalidate this disability certificate; and

(iii) That it is beyond the purview of the Board to determine the nature of duty which can be allocated to the Petitioner.

3.2 The Complainant refuted all the averments made by the Respondent in their reply dated 26.07.2024 and reiterated her prayers as mentioned in para 1.7 above.

4. Hearing (I):

4.1 A hearing was conducted on **21.10.2024** in hybrid mode (offline/online through Video Conferencing at Room No. 529, BA III Wing, Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi. The following parties were present during the hearing:

Sl. No.	Name of the parties/ Representatives	Mode of Presence
Complainant:		
1.	Ms. Deepa Stephen	Online
2.	Adv. Rishabh Sharma, representing Complainant	Online
Respondents:		
1.	Dr. Kirti Singh, (Director Professor Ophthalmology, Maulana Azad Medical College and Director, Guru Nanak Eye Centre)	Online
2.	Dr. Aastha, Assistant Professor, Guru Nanak Eye Centre	Online
3.	Mr. Jitendra, Admin Officer, Guru Nanak Eye Centre.	Online

5. Record of Proceedings

5.1 The Complainant emphasized that the Honorable Court's order dated 7th October 2024 had already directed the Respondent to reconsider the transfer order. She sought two findings in the present hearing:

- I. ***A declaration that the transfer order and related actions amounted to harassment.***
- II. ***A directive confirming that the veracity of a legally issued disability certificate cannot be questioned unless done as per the provisions of the RPwD Act.***

5.2 The Complainant, represented by Advocate Rishabh Sharma, submitted that the transfer order issued on 8th May 2024, lacked reasoning and resulted in undue harassment. The said order transferred the Complainant, Ms. Deepa Stephen, from a desk job in the investigation lab to the OPD ECG section, a physically demanding role unsuitable for her due to a 51% locomotor disability.

5.3 The Complainant contended that this transfer violated the Delhi High Court's precedent, which establishes that transfers without just cause constitute harassment. She submitted that under Sections 58 (3) and 59 of the RPwD Act, a disability certificate issued by a competent authority is final unless formally challenged with recorded reasons, which had not been done in her case.

5.4 The Complainant referred to Annexure 6, the transfer order dated 8th May 2024, which merely stated the reassignment from her desk role to the OPD+ECG section without providing any reasoning. She contended that this arbitrary decision disregarded her disability and required her to perform physically demanding tasks unsuitable for her condition.

5.5 The Complainant presented Annexure 9, the minutes of the meeting dated 19th June 2024, which alleged non-compliance with the transfer order by four nursing staff, including her. She clarified that her non-compliance was due to her prior representation submitted on 10th May 2024, wherein she requested to continue her desk job due to her 51% locomotor disability and that the same was also mentioned in the very minutes of the meeting, albeit without any response from the Centre.

5.6 The Complainant emphasized that the Respondents directed a medical reassessment of her disability by GB Pant Hospital through a special medical board from GIPMER, which was conducted on July 26, 2024, despite her valid disability certificate dated 27th June 2022, which is not in conformity with Sections 58 and 59 of the RPwD Act. The Complainant highlighted that the Respondents later claimed they did not intend to conduct a medical reassessment. However, their actions, including issuing directions to GB Pant Hospital, contradicted this assertion. The reassessment was carried out following their instructions, further aggravating her distress.

5.7 Relying on a Delhi High Court judgment in Bhavneet Singh, the Complainant underscored that persons with disabilities are entitled to preferential postings and exemptions from rotational transfers.

5.8 Lastly, the Complainant alleged that the Respondents' actions caused her humiliation and mental distress. She referred to the findings of GB Pant Hospital's medical board, which confirmed her significant disability and criticized the improper referral process initiated by the administrative officer at Guru Nanak Eye Centre. She called this breach of protocol, which is an example of administrative impropriety and argued that such instances were part of a repeated pattern at Guru Nanak Eye Centre, necessitating strong corrective action to prevent recurrence.

5.9 In her response, Dr. Kirti Singh contended that the transfer order issued on May 8th 2024 was a routine administrative action without any malice or intent to harass the Complainant. They emphasized that the ECG duty assigned was on the ground floor and considered to be one of the lightest roles available. She clarified that the administration was unaware of the Complainant's shift to the ANS office, which was done without proper authorization. She explained that when the transfer order was issued, they believed that the Complainant was still working in the investigation lab. This miscommunication was attributed to the administrative officer being on vacation at the time.

5.10 She further submitted that the ECG section was newly established to provide convenience for elderly and visually impaired patients, ensuring that they did not have to travel to Lok Nayak Hospital for ECG services. She claimed that the duties involved minimal physical exertion and were well within the Complainant's capabilities. While acknowledging an administrative lapse in failing to realize the updated posting status of the Complainant and overlooking the Complainant's objection to the transfer, the Respondent denied questioning the Complainant's disability certificate or its validity. They asserted that the reassessment was suggested solely to determine the specific duties that the Complainant could perform in light of any changes or deterioration in her condition.

5.11 The Respondent further contended that the Complainant's non-compliance with the transfer order was primarily due to her desire to

remain in the ANS office, which was not a designated duty post for a Nursing Assistant. They argued that this position was not officially sanctioned and could not be considered a permanent posting. Referring to the light nature of ECG duties, the Respondents stated that the Complainant had been working in the investigation lab before her reassignment and that the reassigned duties were comparable in physical demand. They claimed that the reassignment did not impose any undue burden on the Complainant.

5.12 The Respondents concluded by reiterating their commitment to supporting persons with disabilities and requested the court to consider the administrative constraints and challenges faced by the hospital. They elaborated that if the Complainant's disability had increased due to her condition, which warranted creation of a supernumerary post for her, they are willing to take it up with the Ministry of Health. They expressed regret for any inadvertent lapses in communication or procedure but denied any intentional wrongdoing or harassment.

6. Observations and Recommendations

6.1 After hearing both the parties, this court acknowledged that submissions made by the parties signify the role lack of communication or lack of awareness and sensitivity towards disability issues and laws governing them can play in arousing grievances and creating conflicts in an organisation. For example, the Respondent has clearly informed that they were not aware of the informal arrangement in which the Complainant was working with the ANS Office. Similarly, the Complainant submitted that her impugned posting order was issued without providing any reasons.

6.2 This Court informed the parties of their rights and duties in the matter of posting and transfers of persons with disabilities as contained in sections 20 and 21 of the RPwD Act, read with Rule 8 of the RPwD Rules and instructions of the DoPT in this regard. This Court observed that in such matters the laws are governed by the concept of **reasonable accommodation**. The demand needs to be reasonable and the administration should be willing to meet or accommodate such reasonable demands. The Complainant's need for her role and duties are to be aligned with the job description of the post for which she has

been recruited, keeping her documented disability in mind.

6.3 This Court observed that in an environment like a hospital, the primary focus must remain on ensuring the patient's care. It emphasized the need to balance the convenience of patients with the rights and accommodations required by employees. The court stated that while employees with disabilities have the right to reasonable accommodations, the expectation of work output in a hospital setting remains critical. It noted that employees cannot demand to be exempted from all duties related to their post. In the instant case, it will be unreasonable for the Complainant to insist for a desk job, while her job entails patient care, unless it is established by due process of law that she has acquired a disability due to which she is no longer fit to work in the post to which she was recruited and is liable, in terms of Section 20 (4) of the RPwD Act, 2016, to be shifted to an alternate suitable post.

6.4 Notwithstanding the above, this Court is also of the view that if any Nursing Officer at the Guru Nanak Eye Hospital has been assigned with only desk roles, the Complainant and other similarly placed employees should also be considered for such assignments as part of reasonable accommodation.

6.5 This Court is also of the view that the referral process followed by the Respondent in directing the GB Pant Hospital for a medical reassessment was not only inappropriate according to the settled procedure but was also unwarranted and contrary to law, imposing an undue burden on her as a person with a locomotor disability.

6.6 Accordingly, the case is disposed of.

(Rajesh Aggarwal)
Chief Commissioner for Persons with Disabilities