



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF THE 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. 13721/1022/2023

In the matter of

Mr. Tapan Kumar Mishra

Respondent:

National Aluminium Company Limited (NALCO),

1. Gist of Complaint

1.1 The Complainant, Mr. Tapan Kumar Mishra, submitted a complaint on 19th April 2024 before the Hon'ble Chief Commissioner for Persons with Disabilities (CCPD), seeking intervention regarding his transfer from Captive Power Plant (CPP), NALCO, Angul, to the Corporate Office at Bhubaneswar, Odisha. As a Senior Manager with a 40% locomotor disability (right hand), the complainant highlighted the challenges of balancing professional duties with caregiving responsibilities for his 70-year-old father, a severe COPD patient, and his 64-year-old mother, who suffers from spinal immobility. The Complainant stated that his requests for transfer, submitted in 2016, 2017, and 2018, were ignored despite assurances from the then CMD of NALCO. He emphasized that the transfer would align with DoPT guidelines advocating for employees with disabilities to be posted near their native place, which in his case is Jatni, Khurda District. The complainant contended that his current posting, approximately 150 km away, exacerbates his personal and professional challenges, including frequent travel requirements that strain his physical health and emotional well-being. He sought the CCPD's intervention to secure his transfer to Bhubaneswar to

provide adequate care for his parents while complying with statutory provisions ensuring reasonable accommodation for employees with disabilities. Supporting documents, including his disability certificate and related correspondence, were enclosed to substantiate his grievance.

2. Reply filed by the Respondent

2.1 The Respondent, represented by the General Manager (H&A) at National Aluminium Company Limited (NALCO), submitted their reply on 06-03-2023, addressing the complainant's grievance regarding his transfer from Captive Power Plant (CPP), Angul, to the Corporate Office, Bhubaneswar. The respondent stated that the complainant, a Senior Manager (Electrical), was assigned to the Safety Department at CPP, Angul, where his responsibilities do not involve frequent movement, ensuring accommodation for his disability. They emphasized that the complainant's presence at the production unit was critical due to operational requirements and manpower shortages caused by large-scale superannuation, which made his transfer operationally unfeasible.

2.2 The Respondent clarified that the DoPT guidelines regarding the placement of employees with disabilities near their native place are not applicable to Central Public Sector Enterprises (CPSEs) unless endorsed by the Department of Public Enterprises (DPE), which has not extended such guidelines to NALCO. They also highlighted that the Angul unit has a full-fledged hospital and provisions for external referrals to meet the complainant's medical needs. While acknowledging the complainant's request for a transfer to Bhubaneswar, the respondent assured that it would be considered at an appropriate time based on future organizational requirements.

3. Rejoinder filed by the Complainant

3.1 The Complainant filed a rejoinder on 30th March 2023 and submitted that his posting at the Safety Department of Captive Power Plant (CPP), Angul, adequately accommodated his disability. He argued that the responsibilities in the department involve substantial movement and physical effort, which exacerbates his

health issues due to his locomotor disability. The Complainant emphasized that his medical condition, documented through certificates and doctors' recommendations, requires a posting closer to his family in Bhubaneswar to ensure better care and reduce physical strain.

3.2 The Complainant further countered the respondent's assertion regarding the inapplicability of Department of Personnel and Training (DoPT) guidelines to Central Public Sector Enterprises (CPSEs). He contended that the statutory obligations under the Rights of Persons with Disabilities Act, 2016 (RPwD Act), override departmental circulars, and the respondent has failed to fulfill their duty to provide reasonable accommodations. He highlighted that his current posting jeopardizes his health, well-being, and ability to perform his duties effectively. The complainant urged the Hon'ble Commissioner to direct the respondent to reconsider his transfer to the Corporate Office in Bhubaneswar and ensure compliance with the provisions of the RPwD Act. Supporting evidence, including medical documents and correspondence, was submitted to substantiate his claims.

4. The Communication of the Legal Framework on the subject of posting/transfer of employees with Disabilities or those having a person with disabilities as a dependent family member - Accessibility of the workplace is enshrined in Article 41 of the Indian Constitution. The Rights of Persons with Disabilities Act, Section 20(5), recommends framing a policy on the posting and transfer of persons with disabilities. Accordingly, the Department of Personnel and Training, through various instructions, has made stipulations in this regard. The latest instruction on the subject can be seen in Paragraph H of their OM number, dated 2 February 2024. Further, Section 21 of the RPWD Act makes it mandatory for all establishments, whether government or private, to frame equal opportunity policies in the manner prescribed by the Central Government. The Central Government, through the RPWD Rules 2017, has prescribed the manner to prepare and publish the equal opportunity policy. Rule 8 makes it mandatory that provisions regarding preference in posting and transfer are included in the

equal opportunity policy of all establishments. Accordingly, an advisory letter was issued by this Court on 15.01.2024 communicating the legal framework on the subject of posting/transfer of employees with Disabilities or those having a person with disabilities as a dependent family member. The Respondent was advised to review their EOP and Transfer Policy, if any in light of the same and inform this Court of the action taken. No response has been received to this communication.

5. **Hearing:** The case was heard via Video Conferencing on 15.05.2024. The following were present in the hearing:

1. Shri Tapan Kumar Mishra For Complainant Online
2. Shri H.S. Pradhan GM (HR), For Respondent 1 Online
3. Ms. Ipsita Mishra SM (HRD), For Respondent 1 Online

5.1 **Record of Proceedings:** At the outset this court sought clarification from the Respondent on the implementation of Department of Personnel & Training (DoPT) circulars, extended to CPSEs via Department of Public Enterprises (DPE) directives in 2014 and 2023, regarding the transfer and posting of employees with disabilities. The Respondent acknowledged the validity of these circulars but cited operational constraints, including manpower requirements due to impending retirements, as challenges to full implementation. They noted that the Complainant was assigned office duties in the Safety Department to accommodate his disability while emphasizing the Angul Plant's robust infrastructure. However, the Complainant countered by highlighting his father's critical health condition and his long-standing transfer requests since 2016, seeking relocation to the Corporate Office on humanitarian grounds.

5.2 The Court expressed concern over the Respondent's HR Department's lack of awareness of relevant DPE circulars as the DoPT OM dated 31.03.2014 has already been made applicable on the CPSEs vide DPE circular No. 6(9)/2006-DPE (SC/ST Cell)- Part dated 07.04.2014. It directed the Respondent to review the DoPT's guidelines on disability-friendly policies. The Respondent was instructed to address the Complainant's transfer request and submit

detailed information on employees with disabilities, including their posting, allowances, and accommodation details, within a week. These steps aim to ensure compliance with statutory guidelines and equitable treatment for employees with disabilities.

6. Submissions made by the Respondent after ROP:

6.1 The Respondent, National Aluminium Company Limited (NALCO), submitted its response to queries raised in the Record of Proceedings on 07.05.2024. They clarified that the Complainant, Mr. Tapan Kumar Mishra, was assigned to the Captive Power Plant due to a shortage of technical manpower caused by large-scale superannuation. He has been accommodated in the Safety Department with limited office duties. The Respondent emphasized that NALCO, as a production-oriented company, cannot place all PWD employees at the Corporate Office.

6.2 On allowances and accommodations for employees with disabilities, the Respondent stated that Transport Allowance at double the normal rate is under review with the administrative ministry. PWD employees receive all admissible allowances under the DPE guidelines. Additionally, NALCO prioritizes ground-floor accommodations for employees with disabilities and reserves a special quota for medical cases, with allotments made transparently online. Details on accommodations and other information were submitted as annexures.

7. Observations

7.1 In light of the legal framework governing the transfer and posting of employees with disabilities, including statutory provisions and guidelines, the Court observes that the complainant's transfer to inaccessible locations is inconsistent with the principles of sensitivity, against the spirit of the law on the subject and the mandates of the Rights of Persons with Disabilities Act, 2016.

8. Recommendations

8.1 The Respondent is recommended to review its decision regarding the Complainant's transfer to the NALCO Corporate Office at Bhubaneswar, Odisha to ensure compliance with the RPwD Act,

2016, particularly Sections 20 (2), 20 (5), and 21, and the relevant DoPT guidelines regarding reasonable accommodation and accessibility. If a post in the same grade/rank as that of the Complainant, namely, the Senior Manager, is available at the Corporate Office and the same is suitable for the disability of the Complainant then it does not appear to be reasonable to deny him transfer to the requested location closer to his domicile on the pretext of operational needs without objectively showing the exigencies. Transferring the Complainant to his requested location would not only address his grievances but also reflect the Respondent's commitment to fostering an inclusive and supportive workplace.

8.2 The Respondent is further recommended to review and revise NALCO's transfer policy and the Equal Opportunity Policy (EOP) to align with the statutory requirements of the RPwD Act, 2016 which may help the complainant to work in a conducive environment, the respondent must also ensure that there is no instance of discrimination against employees with disabilities or caregivers in this regard in future. With a view to facilitating establishments to prepare an appropriate and compliant EoP, this Court has prepared a template of the same which can be accessed on its website or by using the weblink "<https://ccpd.nic.in/guidelines-template-of-equal-opportunity-policy-eop/>". The Respondent may consider using the template mutatis mutandis to prepare/review their EOP and submit a copy to this Court in compliance with Section 21 (2) of the RPwD Act along with an Action Taken Report on the recommendation made by this Court within three months from the date of this order in terms of Section 76 of the RPwD Act, 2016.

8.3 The case is disposed of accordingly.

(Rajesh Aggarwal)
Chief Commissioner