



न्यायालय मुख्य आयुक्त

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. CCPD/16246/1022/25

Dated: 13/10/2025

In the matter of-

Mr. Gopala Agrawal
Email: gopala51@gmail.com

...Complainant

Versus

The Director General (E.I),
ESI Corporation,
Hqrs. Office, Panchdeep Bhawan
C.I.G. Road, New Delhi- 110002
Email: dir-gen@esic.nic.in

...Respondent

Sub: Recommendation to look into the Complaint dated 17.02.2025 received from Mr. Gopala Agrawal and dispose of the same with a speaking order in the light of the legal framework related to posting/transfer/retention of employees with disabilities and caregivers to dependent persons with disabilities

Madam/Sir,

I am directed to refer to a complaint dated 17.02.2025 (copy enclosed) received from Mr. Gopala Agrawal, on the above-mentioned subject, which is self-explanatory. I am further directed to bring to your notice the legal framework on the grievance redressal mechanism concerning employment and service conditions in general, and those on transfer/posting of persons with disabilities. The said provisions are reproduced/ explained in the succeeding paragraphs.

2. Section 23 of the Rights of Persons with Disabilities Act, 2016, hereinafter referred to as "the act", provides as under:

23. (1) Every Government establishment shall appoint a Grievance Redressal Officer for the purpose of section 19 and shall inform the Chief Commissioner or the State Commissioner, as the case may be, about the appointment of such officer.

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(2) Any person aggrieved with the non-compliance of the provisions of section 20, may file a complaint with the Grievance Redressal Officer, who shall investigate it and shall take up the matter with the establishment for corrective action.

(3) The Grievance Redressal Officer shall maintain a register of complaints in the manner as may be prescribed by the Central Government, and every complaint shall be inquired within two weeks of its registration.

(4) If the aggrieved person is not satisfied with the action taken on his or her complaint, he or she may approach the District-Level Committee on disability.

3. And whereas Rule 10 of the Rights of Persons with Disabilities Rules, 2017, hereinafter provides as under:

10. Manner of maintenance of register of complaints by the Government establishments. - (1) Every Government establishment shall appoint an officer not below the rank of a Gazetted Officer as Grievance Redressal Officer:

Provided that where it is not possible to appoint any Gazetted Officer, the Government establishment may appoint the senior most Officer as a Grievance Redressal Officer.

(2) The Grievance Redressal Officer shall maintain a register of complaints of persons with disabilities with the following particulars, namely:-

(a) date of complaint;

(b) name of complainant;

(c) name of the person who is enquiring the complaint;

(d) place of incident;

(e) the name of establishment or person against whom the complaint is made;

(f) gist of the complaint;

(g) documentary evidence, if any;

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(h) date of disposal by the Grievance Redressal Officer;

(i) details of disposal of the appeal by the district level committee; and

(j) any other information.

4. Accordingly, the instant case is referred to the Respondent for being entrusted to the Grievance Redressal Officer (GRO) of the establishment, who will take appropriate remedial measures according to Section 23 of the Act and Rule 10 of the Rules. The complaint shall be examined and disposed of by the competent authority in the Respondent department within 30 days with a speaking order, in the light of the legal framework on the issue of transfer and posting of an employee with disabilities or a caregiver, including but not limited to the following:-

5. The legal framework on the issue of transfer/posting of employees with disabilities or those persons with disabilities as their dependent family members is given as under:

(I) Statutory Provisions and Guidelines

a) Article 41 of the Indian Constitution- The state shall make effective provisions for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement.

b) Section 20 (2) of RPwD Act, 2016 - Every government establishment shall provide reasonable accommodation, appropriate barrier-free and conducive environment to divyang employees.

c) Section 20 (5) of the RPwD Act, 2016 - The appropriate government may frame policies for the posting and transfer of employees with disability.

d) Section 21 of the RPwD Act:

"21. Equal opportunity policy.—(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

e) Rule 8 of the RPwD Rules, 2017 prescribing the manner of preparing and notifying the Equal Opportunity Policy under Section 21 of the Act:

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"8. Manner of publication of equal opportunity policy.

(1) Every establishment shall publish equal opportunity policy for persons with disabilities.

(2) The establishment shall display the equal opportunity policy preferably on their website, failing which, at conspicuous places in their premises.

(3) The equal opportunity policy of a private establishment having twenty or more employees and the Government establishments shall inter-alia, contain the following, namely:

(a) facility and amenity to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment;

(b) list of posts identified suitable for persons with disabilities in the establishment;

(c) the manner of selection of persons with disabilities for various posts, post-recruitment and pre-promotion training, preference in transfer and posting, special leave, preference in allotment of residential accommodation if any, and other facilities;

(d);

(e)

(4)...."

6. Relevant instructions from the DoPT- In this regard, the DoPT, being the nodal ministry of the central government on personnel matters, has issued the following instructions, which have also been circulated by other cadre controlling authorities such as the DFS, the DPE, the Railway Board, etc.:-

(a) F.No. 302/33/2/87-SCT (B) dated 15.02.1988 issued by the Ministry of Finance provided for the 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 be transferred even on promotion if a vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain the Divyang employee at his place of posting, due to administrative exigencies, even then, he must be kept nearest to his original place. in any case, he should not be transferred to a far-off or remote place of posting.

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Case No. CCPD/16246/1022/25

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(b) OM No. A-B 14017/41/90-Estt (RR) dated 10.05.1990 issued by DoP&T provided that employees belonging to Groups C and D may be posted near their native place.

(c) O.M. No. 14017/16/2002-Estt (RR) dated 13.03.2002 issued by DoP&T extended the enabling provision of their OM dated 10.05.1990 to employees belonging to groups A and B as well.

(d) O.M. No. 36035/3/2013-Estt (Res) dated 31.03.2014 issued by the DoP&T laid down guidelines for providing certain facilities to divyang employees of government establishments, wherein para 'H' of the O.M. makes provisions for exemption from the rotational transfer, preference and choice in place of posting with respect to the transfer and posting of divyang employees.

(e) O.M. No. 42011/3/2014-Estt. (Res) dated 06.06.2014, issued by the DoP&T, provided for exemption from routine/rotational transfer of government employees who are caregivers of Divyang children. Considering challenges that are faced by the caregiver of a divyang child, this O.M. provides that the caregiver of a divyang child may be.

(f) O.M. No. 42011/3/2014-Estt (RR) dated 08.10.2018 issued by the DoP&T extended the scope of the O.M. dated 06.06.2014 to cover a government employee who is the main caregiver of a dependent brother or sister with disabilities, in addition to a divyang daughter/son/parents/spouse, for being exempted from the exercise of routine transfer.

(g) O.M No. 36035/44/2023 Estt. (Res) dated 02.02.2024, issued by the DoP&T, reiterated the contents of OM dated 31.03.2014, besides incorporating at Para I of the OM provisions for exemption from rotational transfer, preference, and choice in place of posting with respect to the transfer and posting of caregivers.

7. Analysis of the Provisions & Guidelines

7.1 The Hon'ble Delhi High Court in its judgment dated 02nd April 2025 in the matter of NPTI Vs. Mukesh Kumar held that interim recommendations—such as staying a transfer—issued by the Chief Commissioner for Persons with Disabilities (CCPD) under Section 75 read with Section 76 of the Rights of Persons with Disabilities Act, 2016 (RPwD Act), are not merely advisory but carry a statutory weight. Specifically, such as those directing an employer to defer an internal administrative decision, qualify as “interim recommendations”, which under Section 76 impose an obligation on the authority

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concerned to either act upon them or provide valid, written reasons for non-compliance to both the CCPD and the aggrieved person. The Court reaffirmed that while service-related administrative decisions, like transfers, generally fall within the employer's domain, they become subject to statutory oversight when they potentially infringe the rights of persons with disabilities, particularly rights of non-discrimination and reasonable accommodation under the RPwD Act. The Court in para 36 of its judgment held as under:

"36. For what we have discussed and analyzed above, we are of the considered opinion that the recommendations made by the Chief Commissioner in relation to the exercise undertaken by it under Section 75 (1) (a) & (b) of the 2016 Act will bind the authority concerned which shall take necessary remedial measures and corrective steps, however, such recommendation may not be acted upon or will not bind the authority concerned only and only in a situation such an authority has valid reasons for not accepting a recommendation which are required to be conveyed to the Chief Commissioner as also to the person aggrieved."

7.2 As rightly laid down in DoP&T O.M. dated 31.03.2014, the objective behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which they can achieve the desired performance and where their services can be optimally utilised. A combined reading of all the guidelines further makes it clear that the government's approach to the issue of transfer is progressive and forward-looking.

7.3 The Intention of the RPwD Act, 2016 is reflected in above mentioned provisions of the Act, and the rules and instructions issued in pursuance thereof or aligned with the statute. These provisions make it clear that the legislature intended to provide a supporting environment regarding health, education, social and psychological support. Hence, these guidelines are binding on government establishments, unless they can show that a positive redressal of grievance is not feasible in view of an administrative constraint to be spelt out clearly. In other words, these instructions embody provisions enabling the authorities to provide for reasonable accommodation to an employee with disabilities or a caregiver. If the authority decides not to use this power vested in it in the face of such explicit statutory provisions and guidelines on the subject, then it is inescapable to clarify what prevents

8. Accordingly, the instant case is referred to the respondents for being entrusted to the Grievance Redressal Officer (GRO), who will take appropriate remedial measures. The Complaint shall be examined and disposed of with a speaking order of the Competent Authority within 30 days. While reviewing the matter, the GRO and the Competent Authority shall consider inter alia the legal

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framework on the subject as brought out in para 4 above, along with any other corresponding instructions applicable in this regard.

9. If the complainant is not satisfied with the resolution of her/his grievance, she/he will be at liberty to approach this Court or any other Court or tribunal of appropriate jurisdiction. The respondent is advised to submit an Action Taken Report in terms of Section 76 of the Act within 3 months from the date of issue of these recommendations.

10. Accordingly, the case is disposed of with the approval of the Chief Commissioner for Persons with Disabilities.

Yours faithfully,

(Praveen Prakash Ambashta)
Dy. Chief Commissioner

Copy to:

1) **Gopala Agrawal**

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