



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. CCPD/13650/1022/2023

In the matter of—

Shri Jagdish Prasad

...Complainant

Versus

Comptroller & Auditor General of India

...Respondent No. 1

Office of the Director General of Audit (F&C)

...Respondent No. 2

1. Gist of Complaint:

1.1 Shri Jagdish Prasad, a person with above 40% hearing disability, working as Assistant Audit Officer in the Indian Audit & Accounts Department, filed the present complaint dated 07.12.2022 seeking posting/transfer near his native place in Rajasthan. The Complainant submitted that he was initially posted at Dehradun, far from his native place, and was subsequently on deputation at Jaipur since 2013, which was extended from time to time. It was further submitted that upon completion of deputation tenure in August 2022, his request for further extension/continuation at Jaipur or posting in nearby offices was not acceded to, despite repeated representations citing disability-related hardship and DoPT guidelines.

1.2 The Complainant prayed for direction to the Respondents to consider his case sympathetically and provide posting near Jaipur/Kota or create a suitable post.

2. Notice Issued:

2.1 Vide Notice dated 19.01.2023 under Sections 75 and 77 of the Rights of Persons with Disabilities Act, 2016, the matter was taken up with the Respondents. The Respondents were called upon to submit comments in light of the provisions of the Act including Sections 3, 20 (5), 21 and 23, and applicable DoPT Office Memorandums regarding transfer/posting of persons with disabilities.

3. Submissions made by the Respondents:

3.1 The Respondents submitted that the deputation of the Complainant at Jaipur had already been extended over a prolonged period since 2013 and that continuation beyond the permissible tenure was not feasible in view of administrative rules and cadre management considerations.

3.2 It was further submitted that transfer/posting is governed by policy and availability of vacancies, and no special provision exists for unilateral continuation beyond deputation norms.

4. Submissions made in the Rejoinder:

4.1 The Complainant reiterated his difficulties arising out of hearing disability, long distance from native place, family dependency and communication barriers, and requested reconsideration of his case on humanitarian and statutory grounds. He reiterated that despite representations and consideration, the request for continued posting at Jaipur was not acceded to in the manner sought by the Complainant.

5. Hearing:

5.1 A hearing was conducted on 17.05.2024 in hybrid mode, wherein the following were present:

Sl. No.	Name of the parties / Representatives	For Complainant / Respondent	Mode of Attendance
1.	Shri Jagdish Prasad	Complainant	Online
2.	Advocate Arun Sanwal	For Respondent No.1	Online
3.	Shri A. Bandopadhyay, Senior Audit Officer, Central Office	For Respondent No.2	Online

6. Record of Proceedings:

6.1 During the hearing, the Complainant submitted that he had already joined at Dehradun, but emphasized that while he, being a person with disability, was repatriated from Jaipur, certain non-PwD employees were retained there for longer periods. The Court noted that if this assertion were factually correct, it could disclose a prima facie case of discrimination on the ground of disability.

6.2 The Respondents, through counsel, submitted that the Complainant had been on deputation in Jaipur, that there was no vacancy in Rajasthan for the post of AAO, and also raised an objection that transfer/posting is a service matter and as such CAT has the exclusive jurisdiction over the issue. The Court, however, clarified that it has jurisdiction where the grievance concerns denial of rights, discrimination on the ground of disability, or non-compliance with the RPwD Act, 2016.

6.3 Accordingly, vide Record of Proceedings dated 24.05.2024, the Court directed the Respondents to file an affidavit furnishing: (i) details of PwD and non-PwD officials in Jaipur who had overstayed deputation tenure, (ii) details of officials overstaying tenure under the applicable transfer/deputation policy, (iii) the judgments cited by the Respondents regarding CAT jurisdiction in service matters, and (iv) clarification as to why the Complainant could not be accommodated nearer Jaipur instead of being posted far away.

7. Response to the Record of Proceedings

7.1 In response, the Respondents filed an affidavit stating that as on 01.06.2024, eight officials of AAO and other grades were working on deputation in Jaipur, including two PwD officials; that deputation policy then permitted extension up to seven years at cadre-controlling authority level, with cases beyond seven years requiring Headquarters' decision; and that Jaipur was the only F&C branch office in Rajasthan, while cadre allocation/posting is governed by vacancy position, merit preference and administrative requirements.

8. Observations and Recommendations:

8.1 Upon considering the oral and written submissions of the parties, this Court has concluded that the Respondent has admitted that the posting of newly recruited employees is based strictly on their merit ranking, preference and administrative requirements. In other words, no reasonable accommodation in terms of preference or choice of posting or posting near the native place is

provided by the Respondent to the persons with disabilities. Such a situation is in apparent violation of Rule 8 (3) (c) of the RPwD Rules, 2017, which *inter alia* makes it mandatory for establishments to provide preference to their PwD employees in the matters of transfer and posting. Section 20 (5) also enables the government establishments to make a policy on transfer and posting of employees with disabilities.

8.2 The Respondent is, therefore, recommended to review their posting policy and modify the same in alignment with Section 20 (5) and Section 21 of the RPwD Act, read with Rule of the RPwD Rules, 2017. The Respondents shall also ensure compliance with Section 23 read with Rule 10 of the RPwD Rules, 2017 with regard to institutional grievance redressal mechanisms.

8.3 The Respondents are required to ensure that the Complainant's case is also reviewed afresh in the light of the above recommendations, particularly if non-disabled employees have been permitted to be retained at the same place beyond the normal tenure of the deputation or posting. Cases related to the posting and transfer of employees with disabilities are required to be dealt with in a fair and sensitive manner, balancing administrative requirements with statutory obligations.

8.4 The Respondent shall submit an Action Taken Report within three months in accordance with Section 76 of the RPwD Act, 2016

9. Accordingly, the case is disposed of

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(S. Govindaraj)
Commissioner for Persons with Disabilities