



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.2860/1022/2014

Dated:-14.03.2017

**In the matter of:**

Shri Mukesh Tiwari, JE(EM), D 851  
O/o Headquarter,  
Chief Engineer (AF),  
Udhampur Zone,  
Udhampur-182 101  
Email<mukeshmes1987@gmail.com>  
Complainant

Versus

Military Engineer Services, D 858  
(Through Director General (Personnel),  
Integrated HQ of MoD (Army),  
Engineer-in-Chief's Branch,  
Kashmir House,  
New Delhi-110011..

..... Respondent

**Date of hearing : 01.03.2017**

**Present :**

1. Shri Mukesh Tiwari, Complainant.
2. Lt. Col.K.D. Gokhale, SO-1(Pers) HQCENC, on behalf of the Respondent.

**ORDER**

The above named complainant, a person with 40% locomotor disability filed complaints dated 25.09.2014 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding posting to or nearby Jabalpur.

2. The complainant has submitted that his application addressed to Chief Engineer, Northern Command and copy endorsed to the Court for native posting was forwarded to Chief Engineer, Northern Command duly recommended by the Chief Engineer (AF) vide letter No.15004/AF/JE(E/M)/280/EIB(S) dated 11.09.2014 and the same has been turned down by Chief Engineer, Northern Command vide letter No.41624/Sub/CC/19/E1C(1) dated 16.09.2014. This is genuine request for native posting of a disabled employee on the basis of DoP&T's O.M. No.36035/3/2013-Estt. (Res) dated 31.03.2014 as MES is wide Spread Establishment and many offices are posted at Jabalpur or nearby and thus requisite posting is feasible. Para 2 of replies mentioned that since jurisdiction of HQ Chief Engineer, Northern Command is limited to MES units located in geographical area of J&K, HP and part of Punjab States only is not matching with the facilities provided by Govt. of India vide their ibid letter. As such, in his case his application should have been forwarded to E-in-C's branch as direction issued by Integrated HQ of Ministry of Defence

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(Army) E-in-C's Branch DG pers/E1(C) vide their letter No.B/24273/Misc/OO/E1(C) (Army) dated 23.06.2014 in respect of grievance of ST, SC including Physically Challenged employee working at the establishment regarding request for immediate redressal of issues.

3. The matter was taken up under Section 59 of the Act with the respondent vide Court's letter dated 12.11.2014. followed by reminders .dated 10.12.2014 and 15.01.2015, 08.06.2015, 20.07.2015, 23.09.2015.

4. The Respondent vide letter No. B/20001/VIP/254/E1C(1) dated 21.01.2015 has submitted that individual having accepted his appointment in Northern Command was aware of the service conditions. 40% locomotor disability is not such a disability which necessitates posting to native place as an inescapable requirement on permanent basis. There is acute shortage of JEs in Northern Command and such a posting will open flood gates for such a request especially from Northern and Eastern Commands. DoP&T does not give a blanket approval for choice posting. It is subject to organizational constraints on transfer/posting. We may accept the request of individual on mutual posting. If we have someone from Central Command willing to go to Northern Command. This will meet the organizational requirement also. In view of above, it may not be feasible to transfer the individual to CECC (Jabalpur Station area).

5. The case of the complainant was disposed off vide this Court's letter dated 08.12.2015 and the same case was again re-opened on the request of the Complainant.

6. Joint Director General (pers.), Military Engineer Services, New Delhi vide letter No. B/20001/VIP/433/E1C(1) dated 18.01.2016 has submitted that HQ Northern Command covers entire J&K and small parts of Punjab and Himachal Pradesh. Once assigned to Northern Command, individuals are posted based on deficiency of the particular category of various locations, peace and hard tenures due/done. Considering the physical state of the complainant, he was posted to HQ CE(AF) Zone, Udhampur and taken on strength on 26.02.2011. They submitted that the complainant was posted to HQ CE (AF) Zone as JE E/M on a staff appointment. Duties of such staff appointment requires minimal movement and almost nil site supervision requirement. Considering all the aspect of administrative constraints and physical condition of the complainant, he has no been moved to other office or other station. It is further stated that the request of the complainant can be accepted on mutual posting. If they have someone for Central Command willing to go to NC otherwise action for posting within replacement will open flood gates for such a request especially for NC and EC.

7. The complainant vide his rejoinder dated 10.02.2016 has submitted that the Competent Authority (E-in-C's) cannot overrule the DoP&T as requisite posting is under administrative constraint. The HQ Chief Engineer, Northern Command has already been recommended to transfer the complainant to his native place vide letter No.41625/Sub/Gen/147/RICV (1) dated 30.06.2015. He further submitted that respondent is deliberately discriminating the effort to post the complainant at

staff duties, which will adversely affect the remaining span of services. He submitted that HQ CECC under which the complainant is seeking posting has 3 vacancies lying vacant. He submitted that the complainant can be posted at Jabalpur in every aspect as more than four establishments of same department are near his native place and vacancy also exists there.

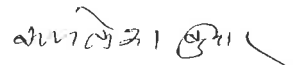
8. Upon considering respondent's replies dated 21.01.2015, 18.01.2016 and complainant's rejoinders dated 05.12.2014, 08.01.2015, 20.01.2015, 03.03.2015, 20.03.2015, 09.09.2015 and 10.02.2016, a hearing was scheduled on 01.03.2017.

9. During the hearing 01.03.2017, the complainant reiterated his written submissions and submitted that it has been mentioned at para 7 of letter No.41625/Sub/Gen/147/EIC(1) dated 30.06.2015 of HQ Chief Engineer, Northern Command sent to this Court that sympathetic view has already been taken and E-in-C's Branch has already been approached to transfer two JE (E/M) Shri Dhirendra Kumar Tripathi and complainant (i.e. Mukesh Tiwari) from Northern Command to Central Command where they want their posting and to make up deficiency created by these transfers and copy of same endorsed to the E-in-C's Branch to transfer the said individuals. A sufficient time has already been lapsed, however, no transfer orders/guidelines have been received so far. He prayed that necessary instructions may please be issued to the HDQ Chief Engineer, Northern Command and E-in-C's Branch to issue the posting order in stipulated time frame to avoid further delay and obligations.

10. The representative of the respondent submitted that it is also understood that the representation given by the individual has already been disposed off vide Case No.2860/1022/2014 dated 08.12.2015 and the same case has again been represented by the individual and a notice of hearing has been served by your Court. The HQ has again reviewed the position as on date and has recommended for change of Command from CE, Northern Command to CE, Central Command by giving due consideration to PH candidates. Further, matter of place of posting shall be decided by CE, Central Command as per rule position.

11. After hearing the parties and perusal of the record available, the Court advises the Respondent to consider the case of the Complainant on humanitarian ground and post him near to his native place in the light of DoP&T's O.M. dated 10.05.1990, 13.03.2002 and 31.03.2014. A compliance report may be sent to this Court within 60 days from the receipt of this order.

12. The case is disposed off.



**Dr. Kamlesh Kumar Pandey )**  
Chief Commissioner  
for Persons with Disabilities