



सत्यमेव जयते

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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.: 7022/1022/2016

Dated: 29 09.2017
Dispatch No.....

In the matter of :

Shri R.P. Mishra,
Ward No. 23,
House No. 23/103,
Katthi Tola,
Shahdol,
Dist. Shahdol,
Madhya Pradesh – 484 001

..... Complainant

Versus

Central Madhya Pradesh Gramin Bank,
(Through the Chairman),
Head Office : 800/19, South Civil Lines,
Chhindwara,
Madhya Pradesh – 480 001

..... Respondent

Date of Hearing : 15.09.2017, 05.09.2017, 02.08.2017 and 14.06.2017

Present :

Shri R.P. Mishra, Complainant, Shri Nikhil Jain and Ms. Monika Dhingra, Advocates on behalf of Complainant.
Shri Arun Shukla, Senior Manager, CMPGB, Chhindwara and Shri A.C. Thakur, Advocate for Respondent.

ORDER

The above named complainant, a person with 80% hearing impairment, had filed complaints dated 07.09.2016 and 14.09.2016 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act, regarding his retention at a branch near to this home town Shahdol.

2. The Complainant submitted that he is working as a Branch Manager in Central Madhya Pradesh Gramin Bank. He is suffering from hearing disability since 1997. He could not hear through hearing machines also. He was regularly been put on duty for doing field jobs which requires extensive travelling and interaction with borrowers. He has been transferred from his home town Shahdol (Br. Dhanpur) to Dist. Seoni (M.P.) (Br. Adegaon) which is 380 Kms away from his home town. Due to the problem of transfer he once took Voluntary Retirement from the Bank but due to advice of his family members, he took back his resignation and rejoined the bank.

3. The complaint was taken up with the Chairman, Central Madhya Pradesh Gramin Bank vide this Court's letter dated 14.12.2016.

....2/-

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(कृपया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)
(Please quote the above file/case number in future correspondence)

4. The General Manager, Central Madhya Pradesh Gramin Bank vide letter no. HO/05/2016-17/1112 dated 10.01.2017 stated that transfer and posting of an employee is done by the competent authority keeping in view the administrative exigencies and optimum utilization of the human resources, which could prove to be in the beneficial interest of the institution. It is stated that the complainant has been suffering from his hearing impairment since long and during this period, he had performed his responsibilities without any demur, with respect to his earlier postings. It is only after issuance of transfer order dated 22.06.2016, that the complainant expressed his unwillingness in carrying out his responsibilities and making requests for reconsideration over his transfer order. The complainant has not been performing the duties and responsibilities expected of him, as a Bank Officer, which has been affecting the business of the Bank adversely. Some of the conduct on the part of the complainant has been degrading the image of the Bank before government agencies and therefore, the complainant has been placed under suspension vide Order dated 09.12.2016 and a disciplinary enquiry has been contemplated against him.

5. The complainant vide his letter dated 03.01.2017 submitted that even since his joining Adegaoon Branch he had been continuously harassed by the General a Manager, Shri O.P. Singh. He has been denied leave since July 2016. His salary for the month of November 2016 was stopped for no reason although it was released after. The complainant further submitted that he was suspended on 09.12.2016 on the ground of fictitious charge of maligning. The complainant vide his letter dated 27.01.2017 has reiterated that he has been suspended by GM Shri O.P. Singh and being victimized physically and mentally. The complainant further reiterated vide his letter dated 27.01.2017 that he has been suspended by his employer and also being victimized physically and mentally. He has not been transferred till dated to his home town Shahdol by his employer.

6. Upon considering the replies of both the respondent and the complainant, a hearing was scheduled on 14.06.2017 at 12:00 Hrs.

7. During the hearing on 14.06.2017, the complainant submitted that he has been attached to Regional Office, Chhindwara, which is 550 kms away from his home town Shahdol. As he is Unable to stay at Headquarter, Regional Office, Chhindwara, he is being denied suspension allowances. Now his employer (i.e. the respondent) establishment has initiated a departmental enquiry knowing very well that he alone is not able to travel by train and buses upto Chhindwara. He prayed to the court that his suspension should be revoked immediately and

he may be transferred to Shahdol of Regional Office and his salary and other monetary dues be released from the date of his suspension, i.e. 09.12.2016. The complainant vide his letter dated 28.06.2017 has informed this Court that he has withdrawn his writ petition no. 3713/2017 from the Hon'ble High Court of Madhya Pradesh through withdrawal application no. 1.A 8313/2017 dated 16.06.2017 and he has enclosed a copy dated 28.06.2017 of the Hon'ble High Court of Madhya Pradesh. The Learned Counsel of the complainant vide his letter dated 04.07.2017 has also informed this Court that the complainant has withdrawn his writ petition filed Before the Hon'ble High Court of Madhya Pradesh (Principal Seat at Jabalpur) to pursue his remedy before this Court. The Learned Counsel has requested for an early hearing in the matter.

8. During the hearing dated 14.06.2017, the Learned Counsel on behalf of the Respondent submitted through their reply in writing that the complainant has invoked the writ jurisdiction of the Hon'ble High Court of Madhya Pradesh Principal Seat at Jabalpur by filing W.P. No.3713/2017 and has sought the following relief amongst others. Therefore, the complainant cannot avail dual remedy for the same cause of action since for identical relief amongst others is pending for adjudication before the Hon'ble High Court of Madhya Pradesh Principal seat at Jabalpur. The Rights of Persons with Disabilities, Act, 2016 does not say that a person with disability cannot be transferred or he can be transferred only at his home town or at a place near his home town. The medical certificates in connection with disability issued by the District Medical Board expired since they were valid only for three years. The medical certificate dated 14.05.2016 is not issued by District Medical Board but by Medical Officer, District Hospital, Shahdol and no cognizance can be taken. The Learned Counsel submitted that there is no document evidencing moving application before competent authority for issuance of certificate of disability after enactment of the Rights of Persons with Disabilities, Act, 2016. The complainant flagrantly violated the office decorum. The complainant is suspended from service and his headquarter is at Chhindwara having medical facilities better than that at Shahdol. Further, Chhindwara is close to Nagpur having very good medical facilities and accordingly, the complainant will be able to consult the best of the doctors during his tenure at Chhindwara. The charge-sheet has been issued against the complaint for as many as 14 charges and he will not face any difficulty in attending the departmental enquiry proceeding at Chhindwara. It is nowhere mentioned in the Rights of Persons with Disabilities, Act, 2016, that the employer cannot expect any kind of service from the employee but to pay salary.

9. Taking the applications dated 28.06.2017 and 04.07.2017 from the complainant and his Legal Counsel respectively into the consideration, it is revealed that the complainant has withdrawn his application from the Hon'ble Bench of the High Court of Madhya Pradesh. Hence, since the

matter is no longer sub judice and also continue to be falling within the jurisdiction of this Court, the case is allowed to be continued at this forum and accordingly the case was adjourned to 24.07.2017 at 16:00 Hrs for further hearing which was rescheduled to 02.08.2017 at 12:30 Hrs on the request of the Respondent's letter dated 18.07.2017.

10. During the hearing on 02.08.2017, the Learned Counsel for the complainant reiterated the submissions made by the Complainant during the last hearing on 14.06.2017.

11. During the hearing, the Learned Counsel for the Respondent submitted vide his written submission dated 31.07.2017 that the Complainant as an Officer of the Bank is expected to adhere to the Regulations but he has flagrantly violated the Regulations, e.g. Regulation 18 which deals with Liability to abide by the regulations and orders, Regulation 20 which deals with obligation to promote the Bank's interest, Regulation 23 which deals with Officer or employee not to be absent from duty without permission or be late in attendance, Regulation 24 which deals with absence from station. As regards charge-sheet dated 24.01.2017, served upon the petitioner in respect of 14 charges on the Complainant, a departmental enquiry has been conducted and the petitioner has submitted written brief before the enquiry officer. At the time of giving reply to the charge-sheet, the Complainant had alleged malafide and averred that the charge-sheet cannot be given if the lapses/negligence pertains to a period of two years or more. The Learned Counsel submitted that there is no change in the status at the time of last proceeding on 14.06.2017 except that the departmental enquiry initiated against the Complainant has been concluded and the Complainant has submitted his written brief before the Enquiry. The Rights of Persons with Disabilities, Act, 2016, does not say that a person with disability cannot be transferred or he can be transferred only at his home town or at a place near his home town. The medical Certificates in connection with disability issued by District Medical Board expired since they were valid for three years. The medical certificate dated 14.05.2016 is not issued by District Medical Board but Medical Officer, District Hospital, Shahdol and no cognizance can be taken. There is no document evidencing moving application before competent authority for issuance of certificate of disability after enactment of the Rights of Persons with Disabilities Act, 2016 on 27.12.2016. The Complainant was suspended from service and his headquarter is at Chhindwara having medical facilities better

than Shahdol. Further, Chhindwara is close to Nagpur having very good medical facilities and accordingly, the Complainant will be able to consult the best of the doctors during his tenure at Chhindwara. In addition to that, Chhindwara is offering better facilities for accommodation in comparison to Shahdol. The Learned Counsel for the Respondent submitted that the Complainant should not have any problem to travel to Chhindwara which is his headquarter during suspension period when he can travel to Delhi to attend this matter. The Respondent further submitted that the Complainant wants to take undue advantage of the provisions of Persons with Disabilities, Act, 2016, whereas it is nowhere mentioned in the Rights of Persons with Disabilities, Act, 2016 that the employer cannot expect any kind of service from the employee but to pay salary.

12. The Court is adjourned to 05.09.2017 at 12:00 Hrs.

13. During the hearing on 05.09.2017, the representative of the Respondent informed this Court that their Legal Counsel was not available to attend the hearing as his son is not well and requested this Court to give them a fresh date of hearing / adjourn the matter to some other date.

14. In the interest of justice, the Court acceded to the request of the representative of the Respondent and accordingly the matter was fixed for hearing on 15.09.2017 at 12:00 Hrs.

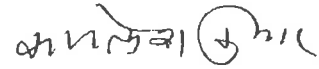
15. During the hearing on 15.09.2017, the learned Counsel for the respondent filed an application enclosing therewith copies of five number of complaints received from various authorities/institutions against the respondent regarding delay in timely posting of salaries in the respective salary accounts, which were taken on record. They also reiterated their written submissions filed earlier in this matter.

16. After hearing both the parties, this Court opined that the contention raised by the respondent primarily pertain only to the disciplinary proceedings against the complainant regarding his alleged misbehavior /conduct while performing his duties at the respondent Bank. However, in view of the fact that the instant complaint has been brought out by the complainant only in the context of transfer of the complainant near his hometown, there is no relevance and/or connection with outcome / pendency of the disciplinary proceedings against the complainant. It is very much accepted fact that to perform the duty, the appropriate environment is an important component and the complainant is very much adjusted to the environment he is working since long. At this stage of service, and having increased hearing loss, certainly he will face much problem in his working, which ultimately reflects on his behaviour and also hamper his overall personality and behaviour. The behavior on which the complainant's conduct is affected, resulting into suspension and

enquiry, may be due to the situation created by the respondent Bank and transfer to the new place. The respondent Bank is advised to be very sensitive towards the persons with disabilities in terms of providing them appropriate working environment and be sensitive towards their needs.

17. It is, therefore, Court directed the respondent that complainant be placed in Shahdol District, near his home town as requested by the complainant in his original complaint. It is further directed that the respondent shall ensure that the aspect of transfer of the complainant as decided by this Court through this order be complied while ensuring that no rights of the complainant, who happens to be a person with disability, is infringed as per the extant provision of the Rights of Persons with Disabilities Act, 2016, notwithstanding the pendency / outcome of the disciplinary proceedings against the complainant.

18. The case is accordingly disposed off.



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