



0100

न्यायालय मुख्य आयुक्त दिव्यांगजन
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: 13447/1022/2022

Complainant

Smt. Anju Devi — R 36431
W/o Shri Sanjay Kumar
R/o Village-Kunduni,
Post Office-Bassi
Tehsil-Joginder Nagar
Distt-Mandi, Himachal Pradesh
Email: anjudevibassi@gmail.com
Mobile No: 07982424322

Versus

Respondent

Mahanideshalaya Assam Rifles : Respondent 1
Directorate General Assam Rifles Shillong-793011
Email: assamrifles.gov.in
(Through Liaison Officer Assam Rifles
Room No. 171, North Block, New Delhi-110001
Email: mha@nic.in

The Joint Secretary — R 36433 : Respondent 2
Police II Division
Ministry of Home Affairs,
North Block, New Delhi-110001
Email: jup2@mha.gov.in

The Chief Security Officer — R 36434 : Respondent 3
Ministry of Home Affairs
North Block, New Delhi-110001
Email: cso@mha.gov.in

GIST OF COMPLAINT

The complainant Smt. Anju Devi W/o of Shri Sanjay Kumar, filed a complaint dated 23.08.2022 requesting for continuous posting of her husband for treatment of her two minor children at PGMIER, Chandigarh.

2. She has submitted that her husband Shri Sanjay Kumar, Junior Reception Officer is serving as Havildar/Clerk and is presently stationed at Delhi on deputation with the Ministry of Home Affairs as JRO since September, 2018. They have three children but her daughter Ms. Shivanya Rao is suffering from acute ailments diagnosed with disability of both legs with spine problem (75%) and son Master Aaryansh Rao is suffering from Pencrotal Hypospadias with pediatric endocrinology. Both are being treated at PGIMER, Chandigarh since 2019. Her husband's parent cadre is Assam Rifles and presently he is on deputation with Ministry of Home Affairs, SSO Division.

3. The complainant further submitted that her husband was repatriated to his parent cadre on 30.03.2022 and got posted at Shillong and from there to Manipur in far flung area. She has requested for

posting of her husband at Delhi (Ministry of Home Affairs) so that they can get their children treated at PGIMER, Chandigarh. The complainant vide email dated 30.09.2022 has attached a copy of Office Order dated 28.09.2022 issued by the Deputy Secretary, Ministry of Home Affairs vide which the deputation period of complainant's husband was extended upto 30.09.2022.

4. The matter was taken up with the Respondent vide letter dated 16.09.2022 under Section 75 of the RPwD Act, 2016.

5. The respondent no. 1 vide letter dated 06.10.2022 has filed the reply in the matter. Major, Assistant Chief Law Officer, Respondent no. 1 has submitted that DEPwD vide notification dated 18.08.2021 had exempted all categories of posts of combatant personnel of CAPF including Assam Rifles from the provision of the said Section. Therefore, the Court of CCPD has no jurisdiction to entertain the application dated 23.08.2022 submitted by the complainant and is liable to be rejected outrightly. The complainant's husband was sent on deputation with the MHA as Junior Reception Officer for a tenure of 03 years which were completed on 04.09.2021. The deputation period was extended by another 06 months i.e upto 08.02.2022 on the ground of medical condition of their children vide letter dated 07.12.2021. On completion of the extended tenure the complainant's husband applied for 30 days leave which has also granted to him.

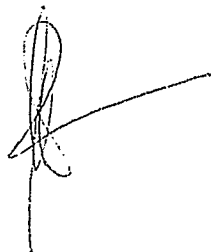
6. In the meanwhile the complainant's husband filed a WP No. 5829/2022 before the Hon'ble High Court of Delhi for quashing his posting order and extended his deputation period for another two years. The Hon'ble High Court vide order dated 04.05.2022 had extended the tenure in Delhi for a period of six months and ordered that thereafter he may be posted anywhere. Further, the Hon'ble High Court vide order dated 01.08.2022 clarified that the said extended tenure would be till 30.09.2022. In view of the above, the Respondent has requested that the complainant's husband has to report to his parent organization after completion of his tenure at Assam Rifles.

7. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 15.11.2022. The following were present:

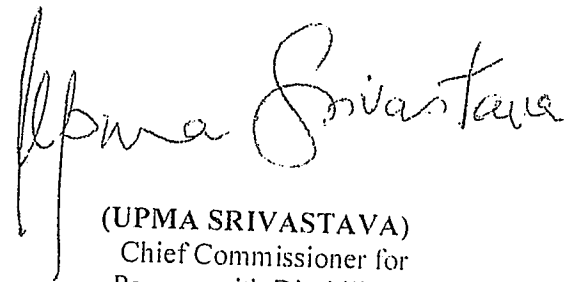
- i) Smt. Anju Devi: **Complainant**
- ii) Lt. Col. B. Patnayak, Assam Rifles &
Shri C.S. Thakur, Dy. Secretary, MHA: **Respondents**

Observations /Recommendations:

8. Complaint is filed on behalf of the employee in Respondent establishment. Complainant prays for continuous posting of her husband for treatment of her two minor children at PGMIER, Chandigarh. She has submitted that her husband Shri Sanjay Kumar, Junior Reception Officer is serving as Havildar/Clerk and is presently stationed at Delhi on deputation with the Ministry of Home Affairs as JRO since September, 2018. They have three children but her daughter Ms. Shivanya Rao is suffering from acute ailments diagnosed with disability of both legs with spine problem (75%) and son Master Aaryansh Rao is suffering from Pencrotal Hypospadias with pediatric endocrinology. Both are being treated at PGIMER, Chandigarh since 2019. Her husband's parent cadre is Assam Rifles and presently he is on deputation with Ministry of Home Affairs, SSO Division. The complainant further submitted that her husband was repatriated to his parent cadre on 30.03.2022 and got posted at Shillong and from there to Manipur in far flung area. She has requested for continued posting of her husband at Delhi (Ministry of Home Affairs) so that they can get their children treated at PGIMER, Chandigarh.

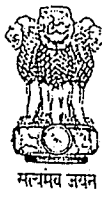


9. Respondent submits that DEPwD vide notification dated 18.08.2021 had exempted all categories of posts of combatant personnel of CAPF including Assam Rifles from the provision of the said Section. Therefore, the Court of CCPD has no jurisdiction to entertain the application dated 23.08.2022 submitted by the complainant and is liable to be rejected outrightly. The complainant's husband was sent on deputation with the MHA as Junior Reception Officer for a tenure of 03 years which were completed on 04.09.2021. The deputation period was extended by another 06 months i.e upto 08.02.2022 on the ground of medical condition of their children vide letter dated 07.12.2021. On completion of the extended tenure the complainant's husband applied for 30 days leave which was also granted to him. Complainant also filed case in Delhi High court which held that the employee may be posted in Delhi for 6 months only, thereafter he may be posted anywhere in India. Delhi High Court judgment was followed and the employee was retained in Delhi for 6 months. Thereafter, he was transferred to Shillong.
10. During online hearing, Respondent informed this Court that the Respondent establishment is North East centric CAPF force and there are very few vacancies. Waiting list for transfer to Delhi is 70 which also includes applications of Divyangjan. Currently the employee is posted station situated near to Imphal, where AIIMS is situated. Respondent further submitted that the Respondent establishment is ready to provide residential accommodation on 'HRA' basis, where family of the employee can live and get medical treatment from AIIMS, Imphal. Respondent further submitted that the employee is also entitled for residential accommodation on 'HRA' basis in Delhi. Respondent also agreed to grant leave to the employee.
11. Complainant reiterated her claim that it is not possible for her to move outside Delhi because medical treatment of her children is going on in Chandigarh.
12. Respondent further suggested that the family of the employee can live in Delhi. Employee who is posted near Imphal can easily reach Delhi from Imphal by air carrier service, which is chartered aircraft service specifically available for armed forces.
13. This Court recommends that the employee can be posted at any such location in North East region from where direct flight is available for Delhi. This is the middle path available which will resolve the issue of lack of vacancies and posting areas outside North East region and which will also help the employee in reaching Delhi in case of circumstances of medical necessity or emergency. During online hearing same suggestion was made and the Respondent also agreed to consider the same subject to availability of vacancies at any such location.
14. This case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 04.01.2023



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13116/1022/2022

Complainant

Shri Thanneeru Suresh

IC No.10983

128, 9th Avenue

Kalpakkam, Tamil Nadu -603102

Call: 94447 88430.

Email: suresh190189@gmail.com

Vs

Respondents:

The Director,

Department of Atomic Energy

Indira Gandhi Centre for Atomic Research,

Kalpakkam-603102

Email : chairman@dae.gov.in, pro@dae.gov.in

The Deputy Chief Executive (Administration & Accounts):

Nuclear Fuel Complex

Hyderabad-500062, Telangana

Email: dcea@nfc.gov.in ; cao@nfc.gov.in

Contact No: 27120218, 27184949, 27184307, 27184747

GIST OF COMPLAINT

This Court had passed the speaking recommendation in the matter by the Commissioner for Persons with Disabilities (CPD) vide order dated 13.05.2022 (copy enclosed). The observations/Recommendations are as under:-

i) Complainant submits that currently he is posted in Kalpakkam, near Chennai in Tamil Nadu. His native place is Hyderabad, Telangana. He submits that because of the nature and disability he faces hardship in living in Tamil Nadu. In addition to these hardships caused because of the nature and percentage of disability, his care giver also facing problem in understanding and communicating in the regional language. Hence, he seeks transfer to Hyderabad. i.e. his native place.

ii) Respondent submits that a committee was constituted to examine the transfer request of the Complainant. Further it submits that the request was denied because the respondent establishment does not have any other unit functioning in any State other than Tamil Nadu. Transfer to other units of Department of Atomic Energy can only be done on mutual basis. Therefore the request was denied.

iii) Further, respondent submits that the complainant has also filed application for 'mutual transfer' to Nuclear Fuel Complex, Hyderabad (hereafter referred as 'NFC Hyderabad'), Telangana. Respondent submits that this application shall be forwarded to NFC, Hyderabad for consideration.

iv) This Court concludes that the Reply filed by the Respondent is satisfactory. Further this Court recommends that the Respondent may consider the Complainant's case on priority basis.

2. Now, the complainant, a person with hearing impairment vide letter dated 12.10.2022 has informed that he joined IGCAR Kalpakkam on 25.05.2018 as Fitter and presently he is working in stores/DPS. IGCAR in Stock Control Section. His wife and child both are also persons with hearing impairment. He further submitted that there is a school for Deaf & Dumb near ECIL, Hyderabad for his son and if he move to Hyderabad, it is very much convenient for him and his family. He had submitted transfer request to NFC, Hyderabad. IGCAR, Kalpakkam accepted his request and recommended to NFC but till date CAO. NFC has not replied to IGCAR's letter.

3. The Administrative Officer-III (RLG), IGCAR vide letter dated 28.06.2022 had forwarded the complainant's transfer applications dated 24.09.2021 and 06.06.2022 along with the order of this Court to the Chief Administrative Officer, NFC, Hyderabad, Telangana for favourable consideration against an existing vacancy of NFC, Hyderabad.

4. **Hearing:** The case was placed before the Chief Commissioner for Persons with Disabilities and it was decided to list the case for hearing and to implead the NFC as a party. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 01.12.2022. The following were present:

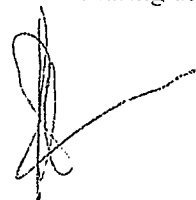
- i) Shri Thanneeru Suresh: **Complainant**
- ii) Shri K.R. Sethuram, CAO, IGCAR, **Respondent -1 and**
Shri N. Vijayaragavan, Dy. Chief Executive (Admin & Accounts), **Respondent-2**

Observations /Recommendations:

5. This Court is inundated with the Complaints related to the issue of transfer. Consequently, this Court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This Court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

6. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfil obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were

- a. To fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,
- b. To create barrier free environment for Persons with Disabilities,
- c. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons,



7. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –

- (a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

8. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.

9. Since in this order this Court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.

10. Issues related to transfer and posting to divyang employees may be divided into three categories:-

- a) Posting of divyang employee at native place,
- b) Exemption from routine transfer of divyang employee,
- c) Posting of employee who serves as care giver of divyang dependant.

STATUTORY PROVISIONS AND GUIDELINES

11. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.

b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.

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

e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T -- This O.M. provides that employees belonging to Group C and D must be posted near to their native place.

f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T -- This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.

g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T -- This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T -- This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.

i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T -- This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

12. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

13. Even in case of employee who serves as care giver of divyang dependent, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

8

14. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependent is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS

15. **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

16. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020

17. Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

18. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

19. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

20. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

21. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble Court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B. VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and Courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

22. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005; judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017. Order dated

08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, Courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

23. In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters Court does not sit as Court of appeal, but Court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfil the international commitments and give equal treatment to Persons with Divyangjan.

24. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

25. Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

26. **ISSUE** – In case if employee who is care giver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

27. O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines. O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

28. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018. however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation. change is only made in persons who can be considered as 'dependent'.

29. Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

4. Women and children with disabilities. — (1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”

16. Duty of educational institutions. —The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities

24. Social security. — (1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

27. Rehabilitation. — (1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

38. Special provisions for persons with disabilities with high support. — (1) Any person with benchmark disability, who considers himself to be in need of high support. or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

2(d) - “care-giver” means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability.

30. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

31. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities: Civil Writ Petition No. 14118/2014; judgment of Hon’ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities (‘CCPD’ in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon’ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank’s contention and held that

grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble Court held that the employee must be retained in Jaipur branch even after promotion.

32. Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble Court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

PRESENT CASE:

33. Complainant submits that he joined Respondent establishment on 25.05.2018 on the post of FITTER. Currently he is posted in Kalpakkam. Complainant submits that he is Divyangjan, his wife is also Divyangjan and his son is also Divyangjan, nature of disability of all three is 'Hearing Impaired'. Complainant submits that his divyang son is living in Hyderabad along with his wife. Complainant further submits that his son has joined a special school where speech therapy is given to him, hence it is not possible for his son to leave Hyderabad and shift to Kalpakkam, Chennai. He further submits that shifting to Kalpakkam in Tamil Nadu will also result in language problems for his son and wife who are already facing problems because of 'Hearing Impairment'.

34. During online hearing, Complainant informed this Court that the earlier transfer application filed by him has been rejected, however, a week before the date of hearing, he has filed a fresh application of mutual transfer.

35. Respondent No. 1 informed this Court that they do not have any problem in transferring the Complainant to Respondent No. 2. It is the Respondent No. 2 who has to take the final decision. Respondent No. 1 also suggested that the Complainant may be transferred to Respondent No. 2 establishment along with the post he is holding.

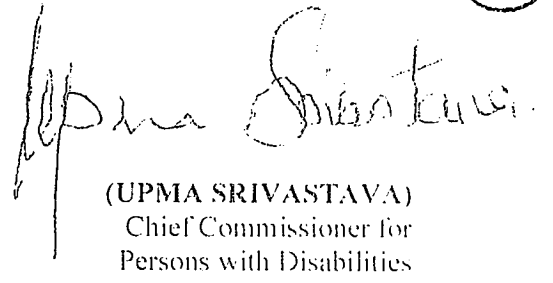
36. Respondent No. 2 informed that since the establishment is engaged in sensitive nature of work hence transfers are conducted only after obtaining advice from 'expert committee'.

37. This Court concludes that the case of the Complainant must be dealt with extreme compassion since he himself is Divyangjan and is also a care giver of divyang dependent child. The case of the Complainant falls within the ambit of DoPT O.M. No. 14017/16/2002 dated 13.03.2002 and also O.M. No. 42011/3/2014, dated 06.06.2014, issued by DoPT.

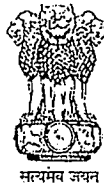
38. Hence, this Court recommends that the Respondent No. 2 shall find avenues to decide the mutual transfer application filed by the Complainant in his favour. If the same is not possible then either the Complainant shall be transferred to Respondent No. 2 establishment along with the post or else he shall be transferred on loan basis even for short term so that immediate relief can be granted to the Complainant.

39. Both the Respondents are directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondents fail to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondents have not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

40. The case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 04.01.2023



मान्यमेव जयते

0/12

12

न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13382/1022/2022

Complainant:

236438

Shri Shahid Hasan

Union Bank of India

Email: hasanshahid475@gmail.com

Vs

Respondent:

236439

The Chairman/Managing Director

Union Bank of India

Human Resource department, Central Office,

239, Union Bank Bhavan, Vidhan Bhavan Marg,

Nariman Point Mumbai-400021

E-mail: gm.hrm@unionbankofindia.com

GIST OF COMPLAINT

शिकायतकर्ता जोकि 40% दृष्टिबाधित दिव्यांगजन है का अपनी शिकायत दिनांक 07.07.2022 मे कहना है कि वह युनियन बैंक ऑफ इंडिया की शाखा बुलंदशहर में कार्यरत है जबकि शिकायतकर्ता का स्थायी निवास कानपुर नगर में हैं। शिकायतकर्ता ने युनियन बैंक ऑफ इंडिया के महाप्रबंधक कार्यालय एफजीएमओ लखनऊ को अपने स्थानांतरण सम्बन्धी पूर्व में कई बार प्रार्थना पत्र लिखा था, परन्तु इस संबन्ध में कोई भी सुनवाई आज तक नहीं की गई। शिकायतकर्ता ने दिनांक 20.06.2022 को भी एक पत्र सक्षम कार्यालय को लिखा, लेकिन युनियन बैंक आंचलिक प्रबन्धन, लखनऊ द्वारा कोई भी संज्ञान नही लिया गया।

2. शिकायतकर्ता का आगे कहना है कि वह अपनी पत्नी एवं बच्चों को कानपुर से बुलंदशहर बुलाकर किराए के मकान में गुजर बसर कर रहा है जबकि बच्चों की शिक्षा दीक्षा बाधित हो रही है | अतः शिकायतकर्ता ने इस कोर्ट से विनम्र निवेदन किया है कि उन्हें जल्दी से जल्दी उनके गृह जनपद में स्थानांतरण किया जाए।

3. The matter was taken up with the Respondent vide letter dated 12.08.2022 under Section 75 of the RPwD Act, 2016.

4. In response, Dy. General Manager-HR, Union Bank of India, vide letter dated 26.08.2022, has submitted that complainant had joined the Bank as Peon/Hamal on 05.02.2010 and posted at Bulandshahr Branch, under RO Meerut. On 01.02.2017, the complainant got promoted to clerical cadre and even after his promotion he was posted in the same Branch i.e. Bulandshahr Branch till date. As per the bank policy, on promotion every employee should be transferred to other location. However, in case of the complainant, on his disability ground he was not transferred to any other location. Since the complainant is an award staff, his transfer is governed by transfer policy for award staff of the Bank. As per transfer diary at present his waiting number for Kanpur station is 65, for Fatehpur Chaurasi station is 03 and for Kanpur district is

5वीं मंजिल, एनआईएसडी भवन, प्लॉट न०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892364, 20892275
5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

(पया भविष्य में पत्राचार के लिए उपरोक्त फाईल/केस संख्या अवश्य लिखें)

5. As per the transfer policy, 'Exception under request transfers', posting on appointment of disabled persons, shall have preference over transfer diary. The complaint of complainant on disability ground after many years of his appointment shall not be in line with the aforesaid provision of transfer diary. Hence, transfer of the complainant will be effected as per the transfer policy.

6. The complainant has not submitted the rejoinder.

7. **Hearing:** The case heard via Video Conferencing by Commissioner for Persons with Disabilities on 13.10.2022. The following were present:

- i) Shri Shahid Hasan: **Complainant (Could not join)**
- ii) Shri Ambarish Kumar Singh, Deputy General Manager (HR), UBI: **Respondent**

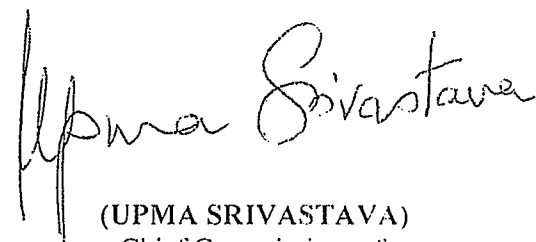
Observations /Recommendations:

8. Complainant submits that presently he is posted in Bulandshahr Branch whereas his home town is Kanpur. He submits that in Bulandshahr he faces hardship because of his disability.

9. Respondent submits that the Complainant was appointed on the post of Peon in 2010. In 2017 he got promoted to clerical cadre. Since, his appointment in 2010 he has never been transferred to any branch outside Bulandshahr and he was also exempted from routine transfer. Even when he was promoted to clerical cadre in 2017 he was not transferred outside Bulandshahr. Respondent further submitted that as per transfer diary Complainant's waiting number is 65 for transfer to Kanpur station, for Kanpur district waiting no. is 12 and for another location namely Fatehpur Chaurasi station which is near Kanpur, waiting number of complainant is 3.

10. This Court appreciates the fact that the respondent has always exempted the complainant from routine transfer. It is also commendable that the respondent did not transfer the complainant even when he was promoted. However, considering the fact that the complainant is Divyang employee and presently facing hardship in Bulandshahr, he can be transferred to Kanpur Station or Kanpur District or Fatehpur Chaurasi Station. DoPT O.M. dated 13.03.2002 also provides that Divyang employees must be posted near their native place. It is also noteworthy to mention that as per transfer diary complainant's waiting number for Fatehpur Chaurasi Station is 3. Hence this Court recommends that the complainant shall be transferred to Fatehpur Chaurasi Station on priority basis.

11. The case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 04.01.2023



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13364/1022/2022

Complainant:

Shri Bunny Chugh

Assistant Audit Officer

Office of the Principal Accountant General (Audit-II)

Audit Bhawan, Commercial 6th Road, Opposite Ishwar Bhavan,

Navrangpura, Ahmedabad, Gujarat-380009

Email: veerchugh@gmail.com, apriyanka894@gmail.com

Filed through: Ms. Priyanka Chugh, Advocate

Vs

Respondent:

The Controller Auditor General of India : Respondent - 1

Pocket-9 Pandit Deen Dayal Upadhyaya Marg

Near Mata Sundari Railway Colony,

New Delhi-110002

Email: cagoffice@cag.gov.in

Contact No: 011-23509600, 23607100, 23234014

The Principal Accountant General (Audit-II) : Respondent-2

Audit Bhawan, Commercial 6th Road

Opp. Ishwar Bhavan, Navrangpura, Ahmedabad,

Gujarat-380009

Email: pagau2gujarat@cag.gov.in

Contact No: 079-26561282

GIST OF COMPLAINT

Ms. Priyanka Chugh, Advocate filed a complaint dated 06.07.2022 on behalf of complainant, a person with 51-70% Hearing Impairment, regarding issuing directions/orders to respondents to grant transfer and posting to complainant near his native place i.e. Delhi offices of the Comptroller General of India, allow the cost of the proceedings and pass any other order/Directions in the interest of justice.

2. She has submitted that the complainant had joined the respondent no. 2 in the post of Assistant Audit Officer on 22.05.2018 under Persons with Disabilities category (Hearing Impairment). That the complainant is currently working in Office of the Principal Accountant General (Audit-II), Ahmedabad of the Respondent No. 2. The complainant was posted in Ahmedabad, Gujarat by Respondent No. 1 though there were vacancies available in Delhi and nearby States and he was assigned Gujarat which was preference no. 10. She also submitted that in each of the previous 9 preferences mentioned States in none of the state there was one percent employees with Hearing Impairment in Assistant Audit Officer Cadre and hence, had to face a lot of hardships living alone in a new place with different culture and language without any support.

3. The complainant first requested his office for transfer and posting to Delhi vide letter dated 08.01.2019 regarding posting or transfer to Delhi or PDA (Cr.), Jaipur. The respondent no. 2 vide O.M.

dated 28.02.2019 stated that his request for transfer cannot be acceded to as there is no provision for unilateral transfer in Civil Audit Stream. The complainant then vide letter dated 05.07.2019 had requested the Assistant Comptroller Auditor General of India to transfer him to near home but in response a warning was issued to the complainant for not using a proper channel to communicate the transfer/posting requests.

4. The matter was taken up with the Respondent vide letter dated 05.08.2022 under Section 75 of the Rights of Persons with Disabilities Act, 2016.

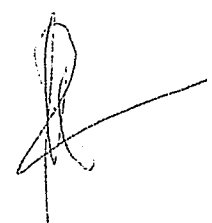
5. In response, Deputy Accountant General (Administration), in Office of PAG. Gujarat vide their letter dated 21.09.2022, submitted that the Indian Audit & Accounts Department (IAAD) is headed by the Comptroller & Auditor General of India (CAG) and assists the CAG in discharging his duties as envisaged in article 148 to 151 of the Constitution of India and the CAG's (Duties, Powers & Conditions of Service) Act 1971. The IAAD, as its name indicates, consists of Audit and Accounts wing. The various Audit Offices of the Audit Wing of the IAAD perform/conduct the Audit function of various Departments/Sectors of the State and Central Government. Thus, depending upon the audit jurisdictions entrusted to them, various Audit Offices have been branched into various streams of Audit viz. Civil Audit, Commercial Audit, Railway Audit, Post and Telecommunications Audit and Defence Audit.

6. He has submitted that in the State of Gujarat, the Office of the Principal Accountant General (Audit-II) Gujarat, Ahmedabad is the Civil Audit Office and Office of the Accountant General (Accounts and Entitlement) Gujarat, Rajkot is the Accounts Office. In IAAD, the post of Assistant Audit Officer in Audit Wing is a Group B Gazetted Post for which the candidates are selected through the Combined Graduate Level Examination (CGLE) held by the Staff Selection Commission. The CAG Headquarters Office allocates the States/Office to the candidates nominated for appointment to the post of AAO in the various offices of the IAAD on the basis of the Merit cum State Preferences submitted by the candidates online. The allocation of the State/Office to a candidate is done prior to the reporting of the candidate to the State Office. therefore, the office of Principal Accountant General (Audit-II) Gujarat, Ahmedabad. has no authority over the allocation of State/Office to the candidates allocated. The IAAD sends the dossiers of the candidates, as received from the SSC, to the allocated offices for issue of offer of appointment to the candidates.

7. The office of the Principal Accountant General (Audit-II) Gujarat, Ahmedabad. is the cadre controlling Authority for all cadres (except commercial cadre SAO, AAO) of the office of the Principal Accountant General (Audit-II) Gujarat, Ahmedabad and Office of the Principal Director Audit (Central). Ahmedabad. As per the offer of appointment to the post of the AAO, the period of probation for the AAO (P) was for two years. Further during the probation period, he/she to qualify the sub ordinate Audit Service Examination (SAS) conducted by Office of the CAG of India, New Delhi for regular appointment as AAO.

8. In the instant matter, the complainant had accepted the offer of appointment and joined the office of the Principal Accountant General (Audit-II), Gujarat, Ahmedabad, erstwhile office of the Principal Accountant General (Economic and Revenue Sector Audit) Gujarat, Ahmedabad, as Assistant Audit Officer (Probationer) in the Civil Stream (Group B Gazette post) on 22.05.2018 (AN) through SSC CGL Examination 2016 under PH (Hearing Impaired) quota.

9. The respondent further submitted that the complainant while on probation, applied (08.01.2019) to the Dy. Accountant General (Administration), office of the PAG (Audit-II) Gujarat, Ahmedabad, for his transfer to the Office of the Principal Director of Audit (Central) Ahmedabad at Jaipur Branch on disability ground. The branch office of the Principal Director of Audit (Central), Ahmedabad, situated in Jaipur. is under the cadre control of Office of the Principal Accountant General (Audit-I) Rajasthan. Jaipur.



Therefore, in absence of any unilateral transfer policy for the Assistant Audit Officers (Civil stream) in the IAAD, his request for transfer to the Jaipur Branch office could not be acceded to.

10. The respondent also submitted that the complainant did not follow the procedure laid down in the above-mentioned Circular of the 07.07.2014 and in violation of the same he by passed the concerned higher authority i.e. Office of the Principal Accountant General (Audit-II) Gujarat, Ahmedabad and directly made his representation to the Assistant Comptroller General of India, at CAG Headquarters, New Delhi which was taken seriously and Memo no. Admin/PC/BC/AAO/TR 2385 dated 20.09.2020 was served to him reminding the laid down procedure for representations to the higher authorities in service matters in future communication.

11. As per the respondent the complainant's request for transfer has not been denied due to his disability, but rather on the ground that there is no unilateral transfer policy to give effect to his transfer. The matters of transfers are incidents of service and it may not be appropriate for this Hon'ble Court to interfere in such matters due to administrative reasons.

12. The Ld. Counsel for the complainant has filed the rejoinder vide email dated 14.10.2022, and submitted that the complainant does not satisfy with the comments submitted by the respondent. The complainant has requested to this Court to direct the respondent to transfer him to Delhi as soon as possible.

13. **Hearing:** The case heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 24.11.2022. The following were present:

- i) Ms. Priyanka Chugh, Advocate on behalf of Complainant
- ii) Dr. S.S. Huda, on behalf of Respondent 1 & 2: Respondent

Observations /Recommendations:

14. This Court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

15. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfill obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were

- a) to fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities.
- b) to create barrier free environment for Persons with Disabilities,
- c) to remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons

16. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the

commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –

- a. Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- b. non-discrimination;
- c. full and effective participation and inclusion in society;
- d. respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e. equality of opportunity;
- f. accessibility;
- g. equality between men and women;
- h. respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

17. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.

18. Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.

19. Issues related to transfer and posting to divyang employees may be divided into three categories :-
- a) Posting of divyang employee at native place,
 - b) Exemption from routine transfer of divyang employee,
 - c) Posting of employee who serves as care giver of divyang dependant.

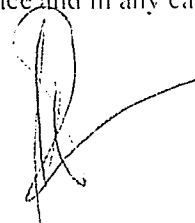
STATUTORY PROVISIONS AND GUIDELINES

20. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.

b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to Divyang employees.

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



- e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.
- f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.
- g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to Divyang employees of government establishments. Under heading ‘H’ of the O.M. two guidelines with respect to transfer and posting of Divyang employees are laid down. Firstly, it is laid down that Divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.
- h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of Divyang child, this O.M. provides that care giver of Divyang child may be exempted from routine transfer/rotational transfer.
- i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependent daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

21. It is noteworthy that even before Section 20(5) was conceptualised. DoP&T and other departments of the government framed policies relating to exemption of Divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to Divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that Government’s approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D Divyang employees from routine transfer. This was extended to Group A and B Divyang employees in year 2002. Similarly, Ministry of Finance (MoF) created an exception for Divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt Divyang employees from routine transfer even in case of promotion of such employee.

22. Even in case of employee who serves as care giver of Divyang dependent, approach is progressive. Till 2018, care giver of Divyang dependent child was exempted from routine transfer. By DoP&T O.M. dated 08.10.2018, Divyang dependent spouse/brother/sister/parents were also added.

23. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of Divyang dependent is indispensable process which enables Divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care

giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of Divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his Divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS

24. **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

25. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that Divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020.

26. Court did not accept the contentions forwarded by the Respondent Bank and held that Divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that Divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby Divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

27. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

28. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of Divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

29. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

30. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

31. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018. hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated



08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When Divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

32. In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters court does not sit as court of appeal, but court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfill the international commitments and give equal treatment to Persons with Divyangjan.

33. **ISSUE** – Various O.Ms. related to transfer & posting of Divyang employees are of recommending nature and are not binding on the government establishments.

34. Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

35. **ISSUE** – In case if employee who is care giver of Divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

36. O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment Tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the Divyang child. Support system and rehabilitation are indispensable process which help Divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines. O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of Divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the Divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

37. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine

transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation change is only made in persons who can be considered as 'dependent'.

38. Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

4. Women and children with disabilities. — (1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”

16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognized by them provide inclusive education to the children with disabilities.

24. Social security.—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

27. Rehabilitation.—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

38. Special provisions for persons with disabilities with high support.—(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

2(d) - “care-giver” means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability.

39. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of Divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

40. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities: Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 -- In this case Divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities (CCPD) for retention in Jaipur. CCPD by its

Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of Divyang employees must be considered with compassion, understanding and expediency. Hon'ble Court held that the employee must be retained in Jaipur branch even after promotion.

41. Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a Divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached Hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

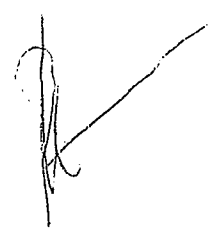
PRESENT CASE:

42. Complaint is filed by the employee of the Respondent establishment who is presently posted at Ahmedabad. The complainant first requested his office for transfer and posting to Delhi vide letter dated 08.01.2019 regarding posting or transfer to Delhi or PDA (Cr.), Jaipur. The Respondent no. 2 vide O.M. dated 28.02.2019 stated that his request for transfer cannot be acceded to as there is no provision for unilateral transfer in Civil Audit Stream. The complainant then vide letter dated 05.07.2019 had requested the Assistant Comptroller Auditor General of India to transfer him to near home but in response a warning was issued to the complainant for not using a proper channel to communicate the transfer/posting requests.

43 Respondent submits that the Indian Audit & Accounts Department (IAAD) is headed by the Comptroller & Auditor General of India (CAG) and assists the CAG in discharging his duties. The IAAD, as its name indicates, consists of Audit and Accounts wing. The various Audit Offices of the Audit Wing of the IAAD perform/conduct the Audit function of various Departments/Sectors of the State and Central Government.

44. Further, it is submitted that in the State of Gujarat, the Office of the Principal Accountant General (Audit-II) Gujarat, Ahmedabad is the Civil Audit Office and Office of the Accountant General (Accounts and Entitlement) Gujarat, Rajkot is the Accounts Office. In IAAD, the post of Assistant Audit Officer in Audit Wing is a Group B Gazetted Post for which the candidates are selected through the Combined Graduate Level Examination (CGLE) held by the Staff Selection Commission. The CAG Headquarters Office allocates the States/Office to the candidates nominated for appointment to the post of AAO in the various offices of the IAAD on the basis of the Merit cum State Preferences submitted by the candidates online. The allocation of the State/Office to a candidate is done prior to the reporting of the candidate to the State Office, therefore, the office of Principal Accountant General (Audit-II) Gujarat, Ahmedabad, has no authority over the allocation of State/Office to the candidates allocated.

45. In the instant matter, the complainant had accepted the offer of appointment and joined the office of the Principal Accountant General (Audit-II), Gujarat, Ahmedabad, as Assistant Audit Officer



(Probationer) in the Civil Stream (Group B Gazette post) on 22.05.2018 under PH (Hearing Impaired) quota.

46. The respondent further submitted that the complainant did not follow the procedure laid down in the above-mentioned Circular of the 07.07.2014 and in violation of the same he by passed the concerned higher authority i.e. Office of the Principal Accountant General (Audit-II) Gujarat, Ahmedabad and directly made his representation to the Assistant Comptroller General of India, at CAG Headquarters, New Delhi which was taken seriously and memo was served to him reminding the laid down procedure for representations to the higher authorities in service matters in future communication. The respondent further submitted that the complainant request for transfer has not been denied due to his disability, but rather on the ground that there is no unilateral transfer policy to give effect to his transfer.

47. The present case is very much similar to another case titled as S K NAUSAD RAHMAN & ORS. v. UNION OF INDIA, Civil Appeal No. 1243 of 2022 (judgment dated 10.03.2022) in which the Hon'ble Supreme Court decided the validity of Order issued by Income Tax Department banning Inter Commissionerate Transfers. In the present case as well the issue at heart is transfer from one zone to another. The Court upheld the Order but at the same time recommended to make transfer policy allowing inter Commissionerate transfer of Divyang employees. Hon'ble Supreme Court decided the validity of Order which banned the ICT. Hon'ble Court held that though Order which banned Inter Commissionerate Transfer is valid and constitutional, Union of India must revisit its policy and exception must be created in favour of a) posting of spouses, b) Divyangjan and c) compassionate transfers. Court has held --

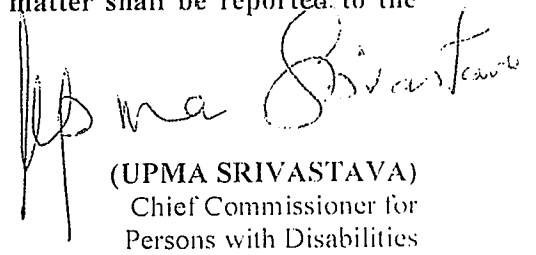
“Hence while we uphold the judgment of the Division Bench of the Kerala High Court, we leave it open to the respondents to revisit the policy to accommodate posting of spouses, the needs of the disabled and compassionate grounds. Such an exercise has to be left within the domain of the executive, ensuring in the process that constitutional values which underlie Articles 14, 15 and 16 and Article 21 of the Constitution are duly protected.”

48. Case of the Complainant squarely falls under O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T. O.M. lays down that Divyang employees may be posted near to their native place. The same guideline was reiterated in O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T. In this O.M. it is provided that at the time of transfer/posting Divyang employee may be given preference in transfer/posting. Objective of these guidelines is to provide an environment to Divyang employee where they can perform and achieve desired results.

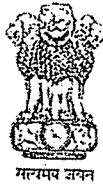
49. Hence, this Court recommends that the Respondent shall find avenues to transfer the Complainant to his hometown, i.e. Delhi, such as mutual transfer or transfer on loan basis. If in case there is no possibility of any type of transfer then the Respondent shall assist the Complainant in going to some post on deputation.

50. Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.

51. The case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 04.01.2023



न्यायालय मुख्य आयुक्त दिव्यांगजन

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. 13373/1101/2022

Complainant:

Shri Sandeep Mishra,
Email: mishrasandip168@gmail.com

Respondent:

The Secretary,
Ministry of Railways,
Rail Bhavan, Rafi Marg,
New Delhi-110011; Email: secyrb@rb.railnet.gov.in

Affected Person: The complainant, a person with 40% Locomotor Disability (Lower Limb)

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 23.06.2022 regarding violation of fundamental right of easy accessibility of persons with disabilities in East Zone Railway Division.

1.2 The complainant submitted that it is hard to board or de-board the local trains due to heavy crowd of the general public in the compartment reserved for persons with disabilities from Hawrah division. There is no separate compartment for persons with disabilities in the local trains of East Zone Railway. No security personnel is deployed to escort the persons with disabilities, as a result, general public harass passengers with disability as they obstruct their entrance and exit. The RPF Security personnel deny render help to passengers with disabilities.

2. The matter was taken up with the Secretary, Ministry of Railways, Rail Bhavan, vide notice dated 10.08.2022. Despite issue of final reminder dated 12.09.2022, no reply has been received from the respondent.

3. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 24.11.2022. The following persons were present during the hearing:

- (1) Shri Sandeep Mishra, the complainant in person.
- (2) Shri S.K. Sinha, Sr. DCM Howrah; Shri Vipul Singhal, Director for the Respondent

4. **Observations & Recommendations:**

4.1 The complainant filed a complaint dated 23.06.2022 regarding violation of fundamental right of easy accessibility of persons with disabilities in East Zone Railway Division. The complainant submitted that it is hard to board or deboard the local trains due to heavy crowd of the general public in the compartment reserved for persons with disabilities from Howrah division. There is no separate compartment for persons with disabilities in the local trains of East Zone Railway. No security personnel is deployed to escort the persons with disabilities, as a result, general public harass passengers with disability as they obstruct their entrance and exit. The RPF Security personnel deny render help to passengers with disabilities.

4.2 During online hearing, Complainant also submitted a photo in which it was clearly visible that the coach which was marked as reserved for divyangjan was completely overcrowded by non-divyang passengers.

4.3 Respondent did not oppose the claims of the Complainant. Respondent also submitted various measures taken to ensure that the coach which is reserved for divyangjan is not occupied by non-divyangjan. Further, the Respondent submitted that due to shortage of manpower and police personals, it is difficult to implement the measures relating to accessibility of divyangjan, which are already in place.

4.4 It is needless to describe in detail the importance of public transport infrastructure which is accessible for divyangjan. However, it will be futile to pass such recommendations, executions of which are nearly impossible over a long period of time. This Court understands the fact that it is futile to use force upon those non-divyangjan who occupy coach reserved for divyangjan due to



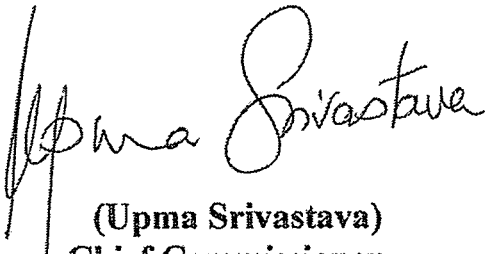
crowds. Instead, such measures should be taken which can sensitise the non-divyang commuters.

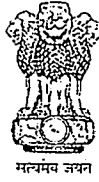
4.5 Hence, this Court recommends that among other measures already taken, the Respondent shall conduct a 2-week special drive on route between Belur and Howrah in which various measures such as public announcements, putting up boards, deployment of volunteers etc. shall be taken with purpose of impacting the conscience of non-divyang commuters so that they voluntarily stop occupying the coaches reserved for divyangjan.

4.6 Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

4.7 Accordingly the case is disposed off.

Dated: 06.01.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities



extra

28

Case No.13106/1031/2022

न्यायालय मुख्य आयुक्त दिव्यांगजन

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. 13106/1031/2022

Complainant:

Dr. Satendra Singh,
Doctor with Disabilities:
Agents of Change (DwDAoC)
A5-303, Olive County, Sector-5,
Vasundhara, Ghaziabad, UP-201212
Email: dr.satendra@gmail.com

- R36669

Respondents:

(1) Director General of Health Services,
Directorate General of Health Services (DGHS)
446-A, Nirman Bhawan, New Delhi-110108
Email: dghs@nic.in

- R36670

(2) Secretary,
National Medical Commission,
Pocket-14, Sector-8, Dwarka, Phase-1,
New Delhi-110077; Email: secy-mci@nic.in

- R36671

Affected Persons: Candidates with disabilities aspiring Medical Education

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 20.12.2021 against forcing of the candidates with disabilities, who are aspiring medical education, to undergo multiple assessments despite having a permanent Unique Disability Identity Card (UDID) issued under the patronage of Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment [DEPWD, M/o SJ&E].

1.2 The complainant submitted that candidates with disabilities are considered for admission in undergraduate and postgraduate medical course against 5% of the total seats, in accordance with the criteria prescribed under the Regulation on Graduate Medical Education (1997) as amended upto 13-05-2019 as per the Rights of Persons with Disabilities Act, 2016 [RPwD Act, 2016]. The NEET UG & PG brochure for 2021 states in point 5.3.3:

"Candidates who consider themselves eligible for this category are advised to ensure their eligibility by getting themselves examined at any Government Medical College/District Hospital/Government Hospital. Such Government Medical College/District Hospital/ Government Hospital shall issue a Disability Certificate in reference with Chapter-VII of the Rights of Persons with Disabilities Rules, 2017. Such a Disability Certificate is issued as per the Schedule to the RPwD Act, 2016 and the Guidelines for the purpose of

1 | Page

assessing the extent of specified disability in a person included under the RPwD Act, 2016 notified in the Gazette of India by the MSJE [DEPwD] on 4th January 2018 and does not confer any right on any candidate to seek admission in a medical course under PwBD Quota. The aforesaid Certificate shall be to ascertain whether a candidate can apply to NTA for appearing in NEET (UG) - 2021 under the PwBD Quota only."

Further point 5.3.4 further adds:

"Thereafter, the candidates, upon selection under PwBD Category, shall have to produce a Disability Certificate issued by the Disability Assessment Board, which shall have assessed the candidate in reference with criteria prescribed under the Regulations on Graduate Medical Education, 1997 as amended upto 14.05.2019. Thus, it is relevant that the candidates after a declaration of the result have to appear before the Disability Assessment Board so as to determine whether they may register or participate in the common online Counseling towards admission in medical courses."

1.3 The candidates from other reserved categories are not asked to appear multiple time to prove their marginalized categories but candidates with disabilities despite having Govt. approved UDID are asked to travel to different parts of the country to prove their disability again and again. To further complicate the matters, as per NEET UG 2021 brochure Appendix-VIII-B (page 92) shows the list of '13 centres for disability certificates' which are located only in 10 States and UTs out of the total 36 States & UTs in India.

1.4 The information provided in NEET UG 2021 brochure is incomplete as it does not give complete details of which centre caters for which disabilities. A case in point is Vardhman Mahavir Medical College & Safdarjang Hospital in New Delhi which does not even have facilities to test candidates with hearing disabilities but this information is hidden from candidates. The complainant provided the links and submitted that many exceptional students with hearing disabilities who qualified NEET UG had to miss the counseling because of this attitudinal barrier.

1.5 Such attitudinal barriers stated to have been criticized by the Committee on the Rights of Persons with Disabilities at the United Nations who in its Concluding Observations in response to Government of India's Country Report stated in point 6 (a) that:

"The Committee is concerned about the prevalence of the medical model of disability in legislation, public policies and attitudes concerning persons with disabilities, particularly in the multiple assessments and certification of disability and the requirement for different assessments to access services in the community, and in the misunderstanding of disability."

Further they recommended Govt. of India in point 7(b) to:

"Reform the guidelines for assessing and certifying disability to bring them into line with the human rights model of disability, ensuring that organizations of persons with disabilities are involved in the reform, that multiple assessments do not create an undue burden for applicants, and that policies and programmes shift from care, treatment and protection towards the

removal of environmental and attitudinal barriers, which prevent equality and inclusion."

1.6 None of these 'disability assessment centres' include doctors with disabilities or disability rights activist which has lead to multiple litigations against these centres. This is also violation of the order of the Court of Chief Commissioner for Persons with Disabilities (CCPD), Govt. of India sent to Secretary (Personnel) of all States/UTs vide *Ref.No.14-2/CCD/2012 31st July, 2012* and which highlight concerns of inadequate appreciation of the situation of the candidates with disabilities in the interview boards for selection to various posts.

1.7 Involvement of persons with disabilities in general and doctors with disabilities in particular is explicitly highlighted in RPwD Act, 2016 and State Rules. Section 33(ii) of the RPwD Act, 2016 emphasizes that 'the appropriate Government shall constitute an expert committee with representation of persons with benchmark disabilities'. Both Rule 4(1)(c) in the Delhi Rights of Persons with Disabilities Rules, 2018 and Jammu and Kashmir Rights of Persons with Disabilities Rules, 2021 mandates a doctor with a disability in State Committee for Research on Disability which highlights the value of lived experience of disability in disability assessment bodies.

1.8 Medical Counseling Committee (MCC) of the Directorate General of Health Services (DGHS), Govt. of India in December has added two more Disability Certification Centres again in Delhi but not in the remaining 26 States & UTs in India which do not have any such centre - both Maharashtra and Delhi 4 and 3 centres respectively. Moreover, even these newly centres lack facilities to certify auditory disability (in case of Atal Bihari Vajpayee Institute of Medical Sciences & RML Hospital) and Intellectual Disability (in case of Lady Hardinge Medical College). Even the existing Govt. Medical College, Agartala has no information to which specified disabilities it cater. These points are highlighted in the page 2 of the MCC document itself which discriminates candidates with disabilities on amount of lack of information.

1.9 The complainant prayed that –

(i) Director General of Health Services be directed to dismantle the existing criteria of having disability assessment board for NEET UG & PG in only 10 States and UT. All States and UTs in India have Govt. medical colleges and hospitals which are issuing UDIDs. Each States or UTs should designate one such assessment board where there are doctors with disabilities which should be notified as disability screening centre;

(ii) The name of these centres be changed from 'Centres for Disability Certificates' to 'Disability NEET Screening Centre' as the certificates issues carry no meaning apart from counselling;

(iii) All such 'Disability NEET Screening Centre' be directed to mandatorily include doctor or health professional with disability in such centres in line with directive from CCPD, RPwD Act, 2016 and Concluding Observation of CRPD; and



(iv) National Medical Commission may be directed to reform the controversial guidelines for assessing and certifying disability to bring them into line with the human rights model of disability with special emphasis on reasonable accommodation in consultations with doctors with disabilities.

2. Submissions made by the Respondent:

2.1 ADG (ME) & Member Secretary, Medical Counseling Committee (MCC) filed the reply dated 24.03.2022 and submitted that candidates with disabilities are considered for admission in undergraduate and postgraduate medical courses against 5% of the total seats, in accordance with the criteria prescribed by MCI/NMC as under the Regulation on Graduate Medical Education (1997) amended upto 13.05.2019 and as envisaged in RPwD Act, 2016. MCC of DGHS is bound to follow the norms laid down by NMC and quashing norms made by NMC does not come under the purview of MCC of DGHS. The NMC has been apprised about the relief sought by the petitioner through D.O. Letter issued by the DGHS dated 24.03.2022.


2.2 The Disability Certificate for medical admissions has to be customized from one of the Disability Centres designated by MCC of DGHS according to NMC/MCI norms as mentioned in Gazettee. In 2018, there were only 04 Disability Certification Centres. For the benefit of PwD candidates, MCC of DGHS vide letter No.U-12021/01/2018-MEC dated 24.01.2019 had requested Director Medical Educations of all States/UTs to identify centres who could issue Disability Certificates in their respective states. Currently there are 15 Disability Certification Centres for the benefit of PwD candidates.

2.3 DO Letter dated 01.11.2021 was sent by the Office of Chairman, MCC, Dr. Rajiv Garg to Director AIIMS, Dr. Randeep Guleria requesting him to designate AIIMS, New Delhi as Disability Certification Centre since it is a premier institute having all the facilities. Medical Superintendent, AIIMS, New Delhi vide letter dated 11.11.2021 declined the constitution of medical board at AIIMS, New Delhi. However, he agreed to certify any specific case for requisite medical examination etc. for some particular reason.

2.4 The State/IT DMEs are not under the direct administrative control of MCC of DGHS, however, all States/UTs DMEs/DHSs have been requested vide letter dated 24.03.2022 to identify Medical Colleges/Hospitals that can be designated as Disability Certification Centres in each capital city of respective States.

2.5 As proposed by the complainant, the name would be changed from 'Centres for Disability Certification' to "Centre for NEET Disability Certification".

2.6 All States/UTs DMEs/DHSs have been requested vide DO letter (dated 24.03.2022) to direct 'Disability Certification Centres' to mandatorily include doctor or health professional with disability in line with directive from CCPD, RPwD Act, 2016 and concluding observation of CRPD under intimation to the Office of Dy. Chief Commissioner, Court of Chief Commissioner for Persons with Disabilities (Divyangjan)





3. Submissions made in Rejoinder:

3.1 The complainant filed his rejoinder dated 19.04.2022 and submitted that the respondent - MCC, DGHS has not responded to any of the three prayers mentioned at Para 1.9 above.

3.2 In addition, the National Eligibility cum Entrance Test (Undergraduate) or NEET (UG) brochure for the year 2022 has introduced a new, controversial category of "severe dyslexia" which never existed before in previous NEET-UG or NEET-PG.

3.3 Page 26 of the NEET-UG 2022 brochure states in clause 6.2.4 'For Candidates claiming the PwD category':

"Dyslexic candidates need to submit Appendix - XV (Form-DYSLEXIC-1) and Appendix - XVI (Form-DYSLEXIC 2) instead of Appendix - XII (Form PwD(II))/ Appendix - XIII (Form-PwD(III))/ Appendix - XIV (Form-PwD(IV)). The certificate must mention 'SEVERE' under the Dyslexia category to enable the candidate to get the benefit of the PwD category"

3.4 Appendix - XV also asks for the name/address and registration number of the Dyslexia Association which means that rather than a medical certifying authority, or UDID the mandatory certificates will be influenced by NGOs. Also, Appendix - XVI: FORM-DYSLEXIC-2 is a newly introduced category which is the Certificate to be produced by Dyslexic Candidate from the Principal of the School/College last attended.

3.5 Neither the RPwD Act, 2016 nor the Guidelines regarding admission of students with "Specified Disabilities" under the RPwDA, 2016 with respect to admission in MBBS Course gazette notified on 14 May 2019 anywhere mentions "severe dyslexia". Introduction of this category is vague and amounts to disqualification of dyslexic candidates who will be having a 40% or above disability but may not fall under the undefined 'severe' dyslexia category. This clause of 'severe dyslexia' has to be removed and replaced with a disability percentage of 40 and above as stated in RPwD Act, 2016.

3.6 The Guidelines for the purpose of assessing the extent of specified disability in a person included under the Rights of Persons with Disabilities Act, 2016 (49 of 2016) Gazette notified on 4 January 2018 states on page 95 as under:

"22.6. Validity of Certificate: The certification will be done for children aged eight years and above only. The child will have to undergo repeat certification at the age of 14 years and at the age of 18 years. **The certificate issued at 18 years will be valid life-long.**"

Therefore, candidates with dyslexia who have received a disability certificate or UDID at 18 years, their validity will be lifelong and they should not be harassed to prove their disability again and again in NEET UG or NEET PG. Therefore, the newly introduced Appendix -XVI: FORM-DYSLEXIC-2 also becomes arbitrary and should be removed from the NEET UG 2012 brochure.

3.7 The complainant prayed to consider the above points and allow him to appear in the final hearing as petitioner and not dispose off the case without his presence as done in the previous case (Case No.12650/1101/2021 - Accessibility of LHMC; the matter was also highlighted in the meeting of core Group on Disability at the National Human Rights Commission).

4. Hearing:

4.1 The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on **23.06.2022**. The following persons were present during the hearing:

- (1) Dr. Satendra Singh, the complainant in person.
- (2) Shri B. Srinivas, Director General of Health Services (DGHS) for the respondent.

4.2 The case was again heard via Video Conferencing by the Chief Commissioner for Persons with Disabilities on **01.12.2022**. The following persons were present during the hearing:

- (1) Dr. Satendra Singh, the complainant in person.
- (2) None appeared on behalf of Respondent No.1.
- (3) Shri Rajeev Verma, Under Secretary, NMC for the respondent No.2.

5. Observation/Recommendations:

5.1 Online hearing was conducted in this Complaint on 23.06.2022. During online hearing, this Court asked the Respondent to explain the rationale for conducting medical examination twice and that too by such authorities which are not present across the country. Respondent No.1 informed this Court that such medical examination is conducted in accordance with the norms made by National Medical Commission ('NMC' in short) which is the body which regulate medical education in India. Respondent is merely an executing agency which executes the rules framed by NMC.

5.2 Thereafter it was concluded that effective disposal of the present Complaint cannot be made in absence of the NMC. Hence NMC was made a party in the present Complaint and notice was issued to the establishment for filing its Reply within 30 days of receiving the notice, however no Reply was filed by NMC.

5.3 Complainant submitted that the benefit of 5% reservation is granted in NEET examination. However, successful candidates are made to get their disability examined from disability assessment board.

5.4 Grievance of the complainant is that such disability assessment boards are very less in number and are not situated everywhere. Such disability centres are

called Centres for Disability Certificate which are 13 in number and are located in 10 states and UT's only.

5.5 Furthermore, complainant submitted that the name of Centre for Disability Certificate must be changed to 'Disability NEET Screening Centre'. Complainant also submitted that all such centres must include doctor or health professional. Complainant has also sought relief against D/o EPwD to direct NMC to reform the guidelines assessing and certified disability.

5.6. Respondent No.1 submitted that 5% reservation is extended in Medical courses as well. In order to take benefit of the reservation, all divyang candidates have to get themselves evaluated from designated Disability Certification Centres which are total 15 Centres.

5.7 Further, Respondent No.1 submitted that in 2018 there were only 4 such Disability Certification Centres. Thereafter, for the convenience of Divyangjan, letter dated 24.01.2019 was written to Director medical education of all the states ad UTs, in which directors of the states and UTs were requested to identify centres to evaluate and issue disability certificate in their respective states.

5.8 Respondent further submitted that a letter dated 01.11.2021 was also written to the Director, AIIMS requesting to designate AIIMS, New Delhi as Disability Certification Centre. AIIMS Delhi declined to concede to this request.

5.9 Further, Respondent No.1 submitted that the States and UTs are not under the direct administrative control of the Respondent No.1. The Respondent No.1 can only request the States and UTs to identify or designate medical hospitals as Disability Certification Centre. On 24.03.2022 a request was again made to all the states and UTs to designate medical college or hospital as a Disability Certification Centre in each capital city of respective States.

5.10 The main issue is related to double examination of the candidates who have successfully qualified NEET exam. First, the candidates have to obtain disability certificate to apply under Divyangjan category then, after qualifying the examination they have to get again examined themselves from Disability Certification Centres. Respondent No.1 was asked during online hearing the logic of double examination.

5.11 On this issue Respondent No. 2 submitted during online hearing that logic of conducting medical examination twice is that the nature of job performed by doctors is technical and involves handling of life and death situations. Hence each divyang person is examined with respect to his particular disability to make sure that such person is suitable for a particular branch of medical education.

5.12 This Court agrees that extra care and precautions are warranted when it comes to the profession of medicine because life and death of person suffering depends on actions of the doctor who is treating him. Hence, the act of twice examining



candidate who aspires to become doctor is not discrimination on the basis of disability.

5.13 However, during online hearing, Complainant mentioned an incident where a candidate was examined by Disability Certification Centre and then he was again forced to undergo examination in the college where he was selected to study.

5.14 Respondents submitted that such incident was not reported and ensured that appropriate steps will be taken to ensure that such incidences do not happen again in future.

5.15 Second issue is related to lack of Disability Certification Centres. Respondents submitted that only 16 such centres exist in 10 states / UT's. Hence, it is certain that divyang candidates must be facing difficulties in getting themselves evaluated.

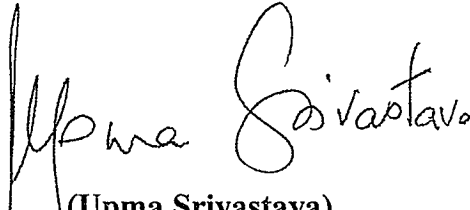
5.16 This Court recommends that facilitation centres should be increased from 16 to many more in number so that divyang candidates do not have to face un-necessary problems in evaluation. Furthermore, till centres cannot be increased, government medical colleges can be authorised to conduct such evaluations.

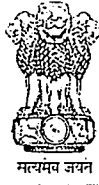
5.17 This Court also recommends that as far as issues relating to problems faced by candidates during second evaluation, as the one raised by the Complainant during online hearing, the Respondent shall form an expert committee which shall comprise of medical practitioners, to examine the various problems which arise and which are faced by the candidates during second time evaluation. The recommendations of this committee shall be shared with this Court.

5.18 Respondents are directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondents fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondents have not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

5.19 Accordingly the case is disposed off.

Dated: 10.01.2023


(Upma Srivastava)
**Chief Commissioner
for Persons with Disabilities**



o/c

38

न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13433/1021/2021

Complainant: Shri Subodh Kumar
H.No. 3439, Type – III
Sector – II, Vehicle Factory Estate
Jabalpur, Madhya Pradesh – 482009
E-mail: <subokumar102@gmail.com>

R36667

Respondent: The Chief General Manager
Vehicle Factory, Jabalpur
Ordnance Factory Board
Jabalpur, Madhya Pradesh – 482009
E-mail: <vfj.ofb@nic.in>

R36668

Complainant: 40% Locomotor disability

GIST of the Complaint:

प्रार्थी श्री सुबोध कुमार का अपनी शिकायत दिनांक 01.08.2022 में कहना है कि उनकी नियुक्ति दिनांक 03.03.2011 को दिव्यांगजन श्रेणी के अन्तर्गत हुई। वह पदोन्नति की सभी शर्तें जैसे रेजीडेन्सी पीरियड, ट्रेड टेस्ट इत्यादि उत्तीर्ण कर चुका है। उनकी नियुक्ति वाहन निर्माणी, जबलपुर से वर्ष 2004 में अप्रेटिशिप करने के बाद प्रदान की गई थी। वाहन निर्माणी, जबलपुर में वर्ष 2003 से प्रार्थी को दिव्यांगजन श्रेणी में नियुक्ति प्रदान नहीं की गई थी। वाहन निर्माणी जबलपुर में वर्ष 2003 से दिव्यांगजन श्रेणी में प्रमोशन में भी लाभ नहीं दिया गया। प्रार्थी ने वाहन निर्माणी, जबलपुर प्रशासन, एलबी अनुभाग को वर्ष 2003 में ही दिव्यांगता प्रमाण पत्र प्रेषित कर दिया था, लेकिन उसका सत्यापन वर्ष- 2017 में कराया था। उसके बाद दिव्यांगता प्रमाण पत्र वर्ष 2018 में प्रेषित किया गया था। उसका सत्यापन वर्ष - 2022 में कराया गया। इस कारण उनकी नियुक्ति वर्ष 2004 - 2005 के बजाय वर्ष - 2011 में हुई। उनके अनुसार उनका प्रमोशन दिव्यांगजन श्रेणी के अन्तर्गत मार्च 2016 में ग्रेड - एचएस-II, मार्च 2019 में ग्रेड - एचएस -I, मार्च - 2022 में एमसीएम एवं आज वह अध्यक्ष पद पर कार्यरत होते। प्रार्थी ने अनुरोध किया है कि उन्हें बैंक डेट (पिछली तारीख) से दिव्यांगजन श्रेणी के अन्तर्गत प्रमोशन एवं उसका ऐरियर दिलवाने में सहायता करे।

2. The matter was taken up with the Respondent vide letter dated 02.09.2022 under Section 75 of the RPwD Act, 2016.

3. In response, Chief General Manager, Vehicle Factory, Jabalpur vide letter dated 12.10.2022 has submitted that Shri Subodh Kumar was appointed w.e.f. 03.03.2011 and he was granted all the benefits given to a person with disability. The applicant is trying to mislead the Hon'ble Court of Chief Commissioner. VFJ vide letter dated 19.10.2015 has replied under RTI Act 2005 and does not pronounce about completion of residency period and passing of trade test. Appointed to the post of Tradesman/Semi Skilled was done from trade apprentices who had completed their training subject to availability of vacancies, receipt of sanction from OFB and strictly on the basis of batch-wise seniority of Trade Apprentices and after passing the requisite trade test.

4. Respondent further stated that the certificate submitted in 2003 at the time of training were not verified. Certificates submitted at the time of Trade Apprentice Training needs not to be verified as the individuals are engaged for training only and this is not an appointment. Engagement as Trade Apprenticeship does not guarantee appointment to the post of Tradesman/ Semi Skilled.

(a) The disability certificate dated 20-01-2003 which shows his disability as 40%, submitted by the individual was sent to the issuing authority i.e. Civil Surgeon-cum - Chief Medical Officer, Vaishali, Bihar for verification on 04-10-2016 i.e. after his appointment as Welder/Semi Skilled on 03-03-2011. In his reply Chief Medical Officer, Vaishali, Bihar vide letter dated 17-03-2017 stated that the disability percentage seem to be doubtful, hence the individual may be directed to report to them for re-assessment of his disability. The individual reported to Chief Medical Officer, Vaishali, Bihar and on his re-assessment a certificate was issued by Chief Medical Officer, Vaishali, Bihar dated 20-07-2017 which lessened his disability from 40% to 17%. Consequently, all the benefits given to a person with disability were suspended. The applicant Suo-Moto went to Civil Hospital Jabalpur (MP) for assessment of his disability. According to the disability certificate dated 26-12-2017 issued by Civil Hospital Jabalpur his disability is 40%. A letter dated 06-03-2018 was forwarded for verification of the said certificate to issuing authority i.e., Civil Surgeon -cum-Chief Medical Superintendent, District Hospital Jabalpur and their comments on following point were sought –

- (i) Whether the disability certificated dated 20.07.2017 issued by Chief Medical Officer, Vaisali Bihar may be treated as Null & Void?
- (ii) Whether the disability of Shri Subodh Kumar is of Degenerative nature or he has some Degenerative disorder so that his disability increased from 17% to 40%?
- (iii) Whether there is a probability that his disability may increase or decrease in future?

(b) The statement of the individual is incorrect. The letter was sent to District Hospital Jabalpur for verification on 06.03.2018. A letter dated 21.06.2022 is received from District Hospital Jabalpur which corroborates that the said certificate is issued by them, but since it did not comment on the points as stated in 4(a)(i) to 4(a)(iii) above, the benefits that were supposed to be given to Shri Subodh Kumar on account of physical disability are still kept in abeyance.

5. It is also pertinent to mention here that in the year 2004-2005 sanction was received from OFB for recruitment against 25 vacancies in the grade of Semi-Skilled. Out of these 25 vacancies, the total vacancies reserved for SC Category was 05. The appointment was being made only in the order of the Seniority of Trade Apprentice Batch. There were large number of candidates who had undergone Apprenticeship training from Vehicle Factory Jabalpur before the applicant and could not be appointed due to non-receipt of sanction for direct recruitment from Ordnance Factory Board/Ministry of Defence. Therefore, only the SC candidates upto 34th Batch could be considered for appointment whereas the unreserved candidates upto 32nd Batch could only be considered for appointment in the year 2005. The applicant was in Apprentice of the 44th Batch, hence owing to his lower seniority position of trade apprentice batch, he could not be appointed during 2004-2005. It was only in year 2010 that the applicant could be considered for appointment and was issued Offer of appointment on 08.02.2011 after receipt of police verification reports from concerned districts. The reason for not verifying certificates in 2003 are stated under point no. 4 and since the applicant was not appointed in 2003 the question of not including his name in seniority list of 2003 does not arise.

6. प्रार्थी ने अपने प्रत्युत्तर दिनांक 03.11.2022 में अपनी शिकायत को दोहराया है।

Hearing : The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **20.12.2022**. The following were present in the hearing:

- Shri Subodh Kumar – (Complainant)
- Smt. Shweta Johri Works Manager / A-2 – (Respondent)

Observations / Recommendations:

7. Complainant submits that he was appointed in 2011. Since then he has not been granted reservation in promotion. He further submits that his Disability Certificate is sent for verification again and again with sole purpose of harassment. Complainant further submits that in 2004 his candidature was wrongfully rejected.

8. Respondent submits that the Complainant was appointed in 2011 on the post of welder/semi-skilled. Thereafter his disability certificate was sent for verification on 04.10.2016 to Chief Medical Officer, Vaishali, Bihar. On 17.03.2017, office of CMO, Vaishali, Bihar replied that the disability percentage of the Complainant is doubtful hence CMO asked the Complainant to reappear for examination. Complainant reappeared and was reexamined, whereby his disability was re-assessed as 17%. Hence, all the benefits associated with divyangjan category were suspended.

9. Thereafter the Complainant, on his own, went to Civil Hospital, Jabalpur, M.P. and got new disability certificate dated 26.12.2017 in which his disability percentage is shown as 40%. The new disability certificate was again sent to CMO office for cross verification. Some questions were specifically asked from the Civil Hospital relating to disability percentage of the Complainant. Civil Hospital, Jabalpur by letter dated 21.06.2022 replied that the said disability certificate is genuine and it was issued by the hospital. However, it did not answer

the questions asked by the Respondent. Hence the benefits relating to disability which are claimed by the Complainant are kept in abeyance.

10. During online hearing, Respondent reiterated that the Civil Hospital, Jabalpur has not answered the specific clarification sought by the Respondent because of which the benefits relating to disability are still not been granted to the Complainant.

11. This Court concludes that the Respondent was right in suspending disability rights when the O/o CMO Vaishali, Bihar certified the Complainant's disability percentage as 17%. Since, the new disability certificate has now been submitted which certifies the Complainant's disability percentage as 40% and the issuing authority has certified it as genuine, the Complainant may be given all the benefits associated with disability. The argument of the Respondent that the Civil Hospital, Jabalpur is not giving clarification sought by the Respondent is a point of dispute between two government establishments and the Complainant should not suffer because of this dispute. Hence, this Court recommends that the Respondent shall grant all the benefits related to disability to the Complainant with effect from the date of Disability Certificate issued by Civil Hospital, Jabalpur.

12. Respondent is directed to submit the Compliance Report of this Order within 3 months from the date of this Order. In case the Respondent fails to submit the Compliance Report within 3 months from the date of the Order, it shall be presumed that the Respondent has not complied with the Order and the issue will be reported to the Parliament in accordance with Section 78 of Rights of Persons with Disabilities Act, 2016.

13. The case is disposed off.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 12.01.2023



40

न्यायालय मुख्य आयुक्त दिव्यांगजन

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. 13239/1141/2022

Complainant:

Prof. Kaushik Kumar Majumdar,
Professor,
Systems Science and Informatics Unit,
Indian Statistical Institute, Bangalore Centre,
8th Mile, Mysore Road, Bangalore-560059
Email: mkkaushik@hotmail.com

- 236674

Affected Person: The complainant, a person with 85% Locomotor Disability (Wheelchair User)

Respondent:

- (1) Chairman & Managing Director,
Air India Limited,
Airlines House, 113, Rakabganj Gurudwara Road,
New Delhi - 110001
- (2) The Directorate General of Civil Aviation,
Technical Centre,
Opposite: Safdarjung Airport,
Aurobindo Marg, New Delhi-110003

- 236675

- 236676

1. Gist of Complaint:

1.1 The complainant, a person with 85% Locomotor Disability (wheelchair user) filed a complaint dated 08.04.2022 against refusal to take battery operated wheelchair [of 27Ah, 12V each (27 x 12 = 324 W)] in the flight (in the cargo hold as usual).

1.2 The complainant submitted that he had polio in early childhood and he is on an electric wheelchair for all his needs from going to toilet and attending office to performing all his daily chores. He works in Bangalore, whereas his home town is Kolkata. Once or twice in a year he travels by air in between these two cities. He also travels by air to other places in India and abroad for professional reasons. He has been facing serious problems with his battery operated wheelchair during air travel due to categorization of batteries as dangerous goods by the Directorate General of Civil Aviation (DGCA). Whereas all batteries including those of mobile phones and laptops are dangerous, only wheelchair batteries are singled out as extraordinary

Contd....(Page No.2)

security threat and travel-barriers are being created by the airliners and security agencies to the power wheelchair users (who by default are severely mobility impaired). He was deboarded by Air India in the Bangalore International Airport on 17 December 2017 due to this issue. It had made news in the national media and a case was filed before this court (Case No. 9164/1141/2018 dated 20.12.2017).

1.3 He further submitted that a similar deboarding was repeated by Air India (Flight AI 748) in the same airport on 7 March 2022. Again it came in the news. He has enclosed the copies of the relevant portions of The Hindu (7th March, 2022), Times of India (10th March, 2022) and The Indian Express (8th March, 2022). The pilot of the flight Mr. Sandeep Marwah refused to take his wheelchair in the flight (in the cargo hold as usual) because it had four batteries of 27 Ah, 12 V each (27 x 12 = 324 Wh). His contention was wheelchairs powered by not more than two batteries each not more than 160 Wh. can only be allowed in the aircraft for safety reasons.

1.4 The complainant alleged that the directives of DGCA are vague and lack important details. The complainant prayed that –

(1) DGCA to come up with a detailed guideline for air passengers need to travel with battery powered mobility aids including electric wheelchairs. The precise text must appear in one single document, in which references can be made to outside materials, but the text of the document must be complete in itself. For compliance one should not need to go through multiple documents.

(2) Air India should be penalized for its inefficiency and callousness in handling passengers with mobility impairment.

(3) Security agencies like Central Industrial Security Force (CISF), which is responsible for airport security, should be sensitized about passengers with disabilities. X-ray scanning of mobility aids like an electric wheelchair is difficult and may not be very informative.

2. Submissions made by the Respondent:

2.1 Respondent No.1 – Air India filed their reply dated 30.06.2022 and inter-alia submitted that Airlines are bound by the rules/regulations/guidelines qua the safety and security issued by DGCA. Due to the “not so common” make (4 installed batteries of large Wh rating) of his wheelchair the Pilot in Command of flight AI-478 in view of the safety concern inquired the specification of batteries used in his wheelchair. The complainant failed to produce single document which could prove the specifications of the batteries (dry non-spillable or wet non-spillable etc.). Due to the reasons mentioned above the Pilot in Command could not permit the carriage to board. The



Contd....(Page No. 3)

respondent also referred to IATA Battery Powered Wheelchair and Mobility Aid Guidance Document which clearly states the requirement to assess the specifications of the Wheelchair and the installed batteries. It also signifies the authority of the Airline and the Captain of the flight in such cases.

2.2 The respondent further submitted that neither DGCA CAR nor IATA Dangerous Goods Regulations speaks explicitly about wheelchair powered by 4 batteries of such high rating (324 Wh each). Such wheelchairs are not that common otherwise there would have been some common consensus about its transport by now.

2.3 Respondent No.2 – DGCA filed their reply dated 29.07.2022 and submitted that as per the Rule 2 of the Aircraft (Carriage of Dangerous Goods) Rules, 2003 "No operator shall carry and no person shall cause or permit to be carried in any aircraft to, from, within or over India or deliver or cause to be delivered for loading on such aircraft any dangerous goods except in accordance with and subject to the requirements specified in the Technical Instructions". Thus, the National Regulations adopts the provisions of ICAO Technical Instructions on Safe Transport of Dangerous Goods and therefore Air Operators carry dangerous goods in compliance of the provisions and requirements of ICAO Technical Instructions.

2.4 As per ICAO Technical Instructions for carriage of Mobility aids (Wheelchairs) powered by dry batteries following provisions are applicable (i) for use by passengers whose mobility is restricted by either a disability, their health or age, or a temporary mobility problem (broken leg), (ii) the passenger should make advance arrangements with each operator and provide information on the type of battery installed and on the handling of the mobility aid (including instructions on how to isolate the battery), ;(iii) in the case of a dry battery or nickel-metal hydride battery, each battery must comply that they are prepared for transport so as to prevent (a) a short circuit (e.g in the case of batteries, by the effective installation of exposed terminals, or in the case of equipment by disconnection of the battery and protection of exposed terminal) and (b) unintentional activation (iv) approval of the operator is required. Therefore, Operator is competent to approve and carry Mobility aids (wheelchairs) powered by dry batteries with compliance of the provisions and requirements of ICAO Technical Instructions.

3. Submissions made in Rejoinder:

The complainant in his rejoinder dated 20.07.2022 has reiterated his complaints and added that Air India should be penalized for its inefficiency and callousness in handling passengers with mobility impairment.

4. Hearing: The case was heard via Video Conferencing by Commissioner for Persons with Disabilities on 08.09.2022 which was rescheduled to 09.09.2022. The following were present:

Contd....(Page No. 4)



- i) Prof. Kaushik Kumar Majumdar - Complainant
- ii) Shri Mahesh Chaudhury DGM , Ground Operation, Air India
- iii) Shri Kulkarni GM (Legal) Air India
- iv) Shri Amit Gupta, Director, with Shri Deepak Yadav, Assistant Director, DGCA.

Observations & Recommendations:

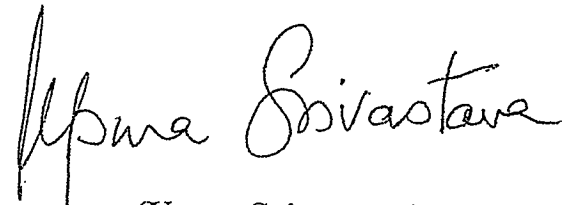
5. The main issue raised by the Complainant is that the Respondent No. 2 does not have clear guidelines with respect to boarding of wheelchair bound divyangjan. Complainant submits that he is wheelchair bound divyangjan. For basic mobility needs he uses battery powered wheelchair. Batteries used in his wheelchair are dry non spill-able batteries. Complainant claims that guidelines issued by the Respondent No. 2 are related to spill-able batteries only and are not related to non-spill-able batteries. Complainant claims that his battery-operated wheelchair does not fall in the category of 'dangerous goods' and hence it must be allowed inside airplane by disconnecting the batteries. Further Complainant points out a specific incidence whereby Air India did not allow his wheelchair inside the airplane and hence he could not travel. Air India refunded the complete amount, however, he demands to impose penalty on the airlines.
6. Respondent submits regarding specific incidence that the wheelchair of the Complainant was of unique nature. Normally wheelchairs are powered by 2 batteries, however in the Complainant's case the wheelchair included 4 batteries. Further on that day, Complainant failed to produce any document regarding specifications of the batteries. Hence, taking abundant precaution, Pilot in Charge of the plane refused to board the wheelchair on the plane. Respondent submits that the Complainant was never denied boarding. Since his wheelchair was not allowed on the plane hence, he himself refused to board the plane. Further, it is submitted that the wheelchair used by the Complainant is of unusual make and are not common. Rules with respect to use of these wheelchairs on plane are not clear and authority to allow such wheelchairs on plane lies with the airline pilot, who decides keeping in mind safety concerns of all the passengers. On the day of incidence reported, decision was taken keeping safety of the passengers and discrimination with divyangjan was not intended.
7. DGCA submits that as per Rule 2 of Aircraft (Carriage of Dangerous Goods) Rules, 2003, aircraft operators are duty bound to follow the technical instructions relating to carrying of dangerous goods. Technical instructions in this regard are issued by International Civil Aviation Organization (ICAO). As per ICAO instructions dry battery-operated wheelchairs are allowed in side plane subject to the condition that the wheelchair bound passenger should provide information on the



Contd....(Page No. 5)

type of battery installed. Further the directions lay down that in case of dry battery, each battery must comply that they are prepared for transport. Further, directions lay down that final authority to decide the use of battery-operated wheelchair lies on the airline operator.

8. During online hearing, Complainant submitted that there are guidelines in place however; there is no coordination between DGCA and various airlines.
9. Respondent No. 1 submitted that there is set procedure regarding removal of batteries. Firstly, the batteries are verified and then they are removed. In the present case the incident happened because the batteries of the wheelchair could not be removed.
10. Respondent No. 2 submitted that it is bound by ICAO guidelines relating to carrying of dangerous goods. Laptop/Tablet/Mobile batteries are not removed because they are of smaller size. Hazardous nature of the battery is decided on the basis of Power of battery and Type of battery.
11. The issue involves safety of all the passengers and mobility of wheelchair bound divyangjan. This Court shall resist from making such observations and recommendations which can lead to some hazardous situation causing threat to life of the passengers of the airlines. Hence, this Court cannot recommend that all wheelchairs must be allowed. This Court recommends that Respondent No. 2 should frame clear guidelines, without violating ICAO guidelines, so that various airlines operating in India and all divyangjan who use air mode of transport can have clarity regarding use and carriage of battery operated wheelchairs in airplanes.
12. Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.
13. This case is disposed off.



(Upma Srivastava)
Chief Commissioner for Persons with Disabilities

Dated: 17.01.2023



ok (45)

न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13469/1022/2022

Complainant

Ms. Iram Naaj
Multi Tasking Staff
Income Tax Office
Email id iramnaaj0505@gmail.com
Mobile no: 99043760913

136665

Versus

Respondent

The Commissioner
Principal Commissioner of Income Tax
Regional Faceless Assessment Centre
Room No. 311, Pratyaksh Kar Bhawan
Ambawadi, Ahmedabad-380015
Phone No: 079-26307246
Email: Ahmedabad.pci@lra.reac@income-tax.gov.in

136666

GIST OF COMPLAINT

The complainant a person with 75% Visual Impairment has filed a complaint dated 18.09.2022, working as Multi Tasking Staff in Income Tax Office, regarding her transfer from Ahmedabad, Gujarat to Delhi NCR/Western UP.

2. The complainant has submitted that she is working as Multi Tasking Staff in Income Tax Office. She is Visually impairment with 75%. She is facing many challenges and hurdles there. She belongs to Saharanpur UP. The complainant stated that her all four siblings are visually impaired. Nobody can come here to stay with her. The complainant has requested this Court to give directive to the respondent to transfer her to her hometown or nearby in Delhi. The complainant submitted that her brother is doing job in Delhi and would be better to get transferred over there.
3. The matter was taken up with the Respondent vide letter dated 10.10.2022 under Section 75 of the RPwD Act, 2016.
4. In response, ITO Head Quarter, Ahmedabad, vide email letter dated 19.10.2022, has submitted that the complainant presently employed as MTS with this charge, have been perused. The complainant had earlier requested for Inter-charge Transfer which was duly considered but rejected by the competent authority in view of withdrawal of Inter-charge Transfer Policy by the Board. The complainant was therefore, advised vide letter dated 11.05.2022 to apply afresh as per the existing policy i.e. transfer on loan basis for transfer from Gujarat.
5. The respondent further stated that the complainant was applied afresh for transfer on 'loan basis' from Gujarat charge to UP (West)-Uttarakhand (Region) and her request has been forwarded to the office of Chief Commissioner of Income-tax-2, Ahmedabad on 01.06.2022 vide letter dated 30.05.2022 for

5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892364, 20892275
5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

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

forwarding and consideration by the competent authority. Therefore, the contention of the complainant that her application is not being considered is factually incorrect.

6. The complainant vide letter dated 21.11.2022 submitted the rejoinder and stated that her application for transfer on loan basis from Gujarat charge to UP (West)-Uttarakhand (Region), which was forwarded vide letter dated 30.05.2022 to the Chief CIT-2 is still undecided and nothing has been heard from the authorities. The complainant is seeking transfer on permanent basis on the ground being visually challenged person under the Disability Act, 2016. The complainant has submitted that due to low vision she faced tremendous difficulty in day to day life especially fear of being knocked down in heavy traffic on roads. The complainant has requested to this Court to issue directions to the respondent to transfer her permanently to her native place so that she can discharge her duties more efficiently and to the best of her abilities. The complainant submitted that her first choice of posting is Delhi/NCR region and second choice is UP West region at Dehradun only.

7. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 03.01.2023. The following were present:

- i) Ms. Iram Naaj: **Complainant**
- ii) Shri D.C. Gehlot, Dy. Commissioner: **Respondent**

Observations/Recommendations:

8. This Court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

9. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfil obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were

- a. to fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities,
- b. To create barrier free environment for Persons with Disabilities,
- c. To remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons

10. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are -Respect for inherent dignity,

individual autonomy including freedom to make one's own choices and independence of person:

- (a) non-discrimination;
- (b) full and effective participation and inclusion in society;
- (c) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (d) equality of opportunity;
- (e) accessibility;
- (f) equality between men and women;
- (g) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

11. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment. promotion. transfer etc.

12. Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and caselaws on the point.

13. Issues related to transfer and posting to divyang employees may be divided into three categories:-

- a) Posting of divyang employee at native place,
- b) Exemption from routine transfer of divyang employee,
- c) Posting of employee who serves as care giver of divyang dependant.

STATUTORY PROVISIONS AND GUIDELINES

- 14. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.
- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.
- d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to 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 even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.

- e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.
- f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.
- g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.
- h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.
- i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

- 15. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.
- 16. Even in case of employee who serves as care giver of divyang dependant, approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.
- 17. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependant is indispensable process which enables

divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS

18. **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

19. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA V. CANARA BANK: W.P.(C) 7927/2020, judgment dated 05.11.2020

20. Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

21. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

22. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA V. CANARA BANK: W.P.(C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

23. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

24. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble court in UNION OF INDIA V. S.L. ABBAS AIR 1993 SC 240 and in BAVARDHIA RAO V. S. CHAVAN AIR 1989 SC 1955, held that transfer is incidence of service and courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

25. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI V. BANK OF INDIA: W.P. No. 148/2017, judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN V. STATE BANK OF PATIALA: I PA No.

74 2005 judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION (C.A. No. 2234/2014) order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDIA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

26. In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters court does not sit as court of appeal, but court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfil the international commitments and give equal treatment to Persons with Divyangjan.

27. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

28. Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHANDA v. PUNJAB STATE ELECTRICITY BOARD (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

29. **ISSUE** – In case if employee who is care giver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

30. O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines. O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer

31. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependant'.

32. Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

4. Women and children with disabilities.—(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”

16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities

24. Social security.—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five percent. higher than the similar schemes applicable to others.

27. Rehabilitation.—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

38. Special provisions for persons with disabilities with high support.—(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

2(d) - “care-giver” means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability.

33. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

34. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities: Civil Writ Petition No. 14118/2014, Judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 - In this case

divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble court held that the employee must be retained in Jaipur branch even after promotion.

35. Samrendra Kumar Singh v. State Bank of India, Writ Petition No. 5695/2014, judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

PRESENT CASE:

36. Complainant submits that she was appointed as MTS in the Respondent establishment. She is posted in Ahmedabad, Gujrat and her home town is Saharanpur, U.P. She submits that because of her disability she finds it difficult to commute between her office and home. In her family there is no other person who can come and live along with her in Ahmedabad, Gujrat. Hence, she requests this Court to transfer her either to her hometown or to Delhi.

37. Respondent submits that inter Commissionerate transfer is not allowed hence the Complainant was asked to apply for transfer 'on loan basis'. She has applied for transfer on loan basis and her application has been transferred to Office of Chief Commissioner of Income tax-II, Ahmedabad.

38. This Court receives similar Complaints against Income Tax department almost every week. In number of recommendations issued to the Respondent establishment, this Court has specifically recommended to form transfer policy whereby Inter-Commissionerate transfer of divyangjan employees can be allowed. The recommendation is given in furtherance of Section 20(5) of Rights of Persons with Disabilities Act, 2016 and various guidelines issued by DoPT. However, with great agony this Court has to note that the Respondent is not paying any heed and it has completely failed to implement Section 20(5) of Rights of Persons with Disabilities Act, 2016 and other DoPT guidelines on the issue of transfer.

39. It is noteworthy to mention that recently hon'ble Supreme Court in judgment titled as SK NAUSAD RAHMAN & ORS. v. UNION OF INDIA, Civil Appeal No. 1243 of 2022 (judgment dated 10.03.2022) noted that Union of India must revisit its policy on the issue of Inter-Commissionerate Transfer and shall make exemption in favor of divyang employees and other employees such as woman, compassionate transfers etc.

53

40. This Court recommends that the Respondent shall implement Section 20(5) of Rights of Persons with Disabilities Act, 2016 and also the guidelines issued by DoPT on the issue of transfer. Further this Court recommends that the Complainant shall be transferred to office situated in her hometown or nearest to her hometown.

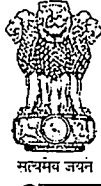
41. Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.

42. The case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 17.01.2023



54

न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13332/1022/2022

Complainant:

Shri Deepak Kumar Meena
Khalasi
No. 271 Salpura Road Chhabara Gugor
Dist. Baran Rajasthan, 325220
Email: dkneenawr@gmail.com
Mobile No. 09887342885, 07976041372

— 236663

Vs

Respondent:

The Divisional Railway Manager (DRM)
DRM Office, West Central Railway
Kota-324001, Rajasthan
Email: shamindra.kadian@gmail.com, dram@ktt.railnet.gov.in,
Contact No: 0744-2467000

— 236664

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 14.06.2022 में कहना है कि वह 75% अस्थिबाधित दिव्यांगजन है एवं वर्ष 2015 में उनका चयन आरआरसी/डब्लूसी (पश्चिम रेलवे) अहमदाबाद में खलासी के पद पर हुआ था। उन्होंने दिनांक 23/12/2015 में कार्यभार संभाल लिया था। वर्तमान में वह वरिष्ठ कोचिंग डिपो कांकरिया (मी. ला.) अहमदाबाद में दिव्यांग कोटे के तहत खलासी पद पर कार्यरत है। शिकायतकर्ता का कहना है कि वह अकेले रहते हैं तथा दोनों पैरो से शारीरिक रूप से दिव्यांगजन हैं। वह मूल रूप से बारा जिले का रहने वाला है एवं उनकी देखभाल करने के लिए उनके परिवार का कोई सदस्य उनके साथ नहीं है।

2. शिकायतकर्ता के अनुसार उनका पूरा परिवार छबडा गुगोर (जिला बारा) में रहता है। दिव्यांग होने के कारण उन्हें अनेक समस्याओं का सामना करना पड़ता है जिससे वह भारतीय रेलवे के विकास में पूर्ण रूप से सहयोग नहीं कर पा रहे हैं। इसी कारणवश उन्होंने स्वयं के अनुरोध पर इंटर रेलवे कोटा पर बदली हेतु आवेदन पत्र किया था जिसमें मंडल रेल प्रबंधक-कोटा द्वारा स्वीकार कर लिया गया था और मंडल रेल प्रबंधक-कोटा द्वारा उन्हें भी एनओसी दिनांक 24/08/2018 की छाया प्रति दी गई थी। लेकिन आंधा घंटों बाद फोन करके वापिस बुला लिया और एनओसी की छायाप्रति वापस ले ली गई तथा अब एनओसी भेजने से मना कर रहे हैं। शिकायतकर्ता ने मुख्य आयुक्त दिव्यांगजन कोर्ट से विनम्र निवेदन किया है कि उन्हें वापस एनओसी दिलवाने की कृपा की जाए।

3. The matter was taken up with the Respondent vide letter dated 20.07.2022 under Section 75 of the RPwD Act, 2016.

4. In response, Advocate Shri Shamindra Singh Kadian, ACGC, Delhi, on behalf of the respondent has filed the comments vide letter dated 14.09.2022 and submitted that the complaint filed by the complainant is totally on the basis of false and misleading facts having no iota of truth. The complainant has not approached this Hon'ble Court with clean hands and suppressed the material facts from the Court. It is well settled by the Apex Court that when a person not approach with clean hands and conceal the facts, is not entitle for any relief from the Court.

5. The respondent further stated that the actual facts are that the complainant has approached the answering respondent/department for his transfer and the answering respondent had issued an NOC to him, to take transfer of his choice, vide letter dated 24.08.2018. On receiving the NOC, the complainant has neither relieved himself from the place of duty nor he joined at transferred place at Kota, Rajasthan, within six months of issuance of the above said NOC to him. The respondent further submitted that if the person not joined the transferred place within six months, the validity of the NOC would have been expired and in furtherance of the same the answering respondent/department was constrained to issue a letter dated 05.03.2019.

6. The complainant has filed his rejoinder vide email dated 14.11.2022 and submitted that no one has given him any information in this regard so far.

7. **Hearing:** The case was fixed for hearing on 08.12.2022 which was re-scheduled to 27.12.2022 and again re-scheduled to 30.12.2022. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 30.12.2022. The following were present:

- i) **Shri Deepak Kumar Meena: Complainant**
- ii) **Shri Suprakash, Sr. DPO, Kota: Respondent**

Observations /Recommendations:

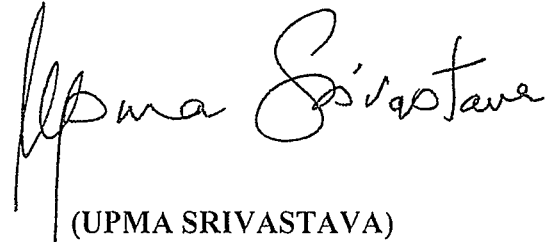
8. Complainant submits that he was appointed on the post of Khalasi in year 2015. He claims that he lives alone far away from his family. He claims that he applied for transfer before Zone Railway Manager, Kota, who issued NOC in his favour on 24.08.2018. He claims that after half an hour the NOC which was issued to him was taken back. He prays before this Court to recommend the Respondent to re-issue the NOC.

9. Respondent submits that the Complainant has concealed the facts from this Court. The respondent states that the actual facts are that the complainant has approached the answering respondent/department for his transfer and the answering respondent had issued an NOC to him, to take transfer of his choice, vide letter dated 24.08.2018. On receiving the NOC, the complainant has neither relieved himself from the place of duty nor he joined at transferred place at Kota, Rajasthan, within six months of issuance of the above said NOC to him. The respondent further submitted that if the person does not join the transferred place within six months, the validity of the NOC gets expired and in furtherance of the same the answering respondent/department was constrained to issue a letter dated 05.03.2019.

10. During online hearing, Respondent informed this Court that there is vacancy available in Ahmedabad office. If the Complainant will apply for transfer, the same will be done.

11. This Court recommends that the Complainant shall apply for the transfer to Ahmedabad office and the Respondent shall transfer the Complainant to Ahmedabad, as assured by him during online hearing. Further, intervention of this Court in the present Complaint is not warranted.

12. This case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 17.01.2023



न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13319/1022/2022

Complainant:

Shri Braj Mohan Banra

Tech-III/C&W/TVC

Dept. Mechanical

Southern Railway

Email: sumacsvipin@gmail.com

Mobile No: 08210521775

- R36661

Versus

Respondent

The Divisional Railway Manager (DRM)

Southern Railway

Divisional Office, Personnel Branch

Thiruvananthapuram

Email: drmtvc@sr.railnet.gov.in; roja.murali@gov.in

gm@sr.railnet.gov.in

- R36662

GIST OF COMPLAINT

शिकायतकर्ता का अपनी शिकायत पत्र दिनांक 06.06.2022 में कहना है कि वह 65 प्रतिशत लोकोमोटर दिव्यांगजन कर्मचारी है जो कि चैन्सर्ड जोन के अन्तर्गत त्रिवेन्द्रम डिविजन में मैकेनिकल विभाग में एसएसई/सीडी/ओ/टीवीसी महोदय के अधीन दिनांक 17.04.2012 से एपीपी-टेक ग्रेड-3 के पद पर कार्यरत है। शिकायतकर्ता का आगे कहना है कि उसने दिनांक 05/2017 में त्रिवेन्द्रम डिविजन से चक्रधरपुर डिविजन में निजी अनुरोध पर स्थानांतरण हेतु अपने कार्यालय में आवेदन दिया था जो कि त्रिवेन्द्रम डिविजन में दिनांक 24.01.2018 को स्वीकृति हेतु रजिस्ट्रेशन हो गया था। उसके बाद कार्यालय से ही उनका फाइल गुम हो गया था। शिकायतकर्ता ने द्वारा आवेदन 20.03.2020 को कार्यालय में प्रस्तुत किया था लेकिन 5 वर्षों से अधिक समय बीत जाने के बाद भी अब तक उनका आवेदन त्रिवेन्द्रम डिविजन में लंबित है। शिकायतकर्ता का कहना है कि उनके माता पिता काफी बुजुर्ग होने के कारण अक्सर बीमार रहते हैं। यदि वह उनके साथ रहता तो अपने माता पिता की देखभाल कर सकता है। शिकायतकर्ता ने मुख्य आयुक्त दिव्यांगजन कोर्ट से विनम्र निवेदन किया है कि उनका स्थानांतरण गृह जिला में करवाने की कृपा की जाए।

2. The matter was taken up with the Respondent vide letter dated 08.07.2022 under Section 75 of the RPwD Act, 2016.

3. In response Sr. Divisional Personnel Officer/TVC, Southern Railway vide letter dated 26.07.2022 and affidavit dated 22.08.2022 has inter-alia submitted that the complainant had applied for IRT to Chakradharapur Division of South Eastern Railway on 05.05.2017 as Tech. Gr.

5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892364, 20892275
5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

(पया भविष्य में पत्राचार के लिए उपरोक्त फाइल/केस संख्या अवश्य लिखें)

(Please quote the above file/case number in future correspondence)



III on bottom seniority. The application was forwarded to the Railway concerned on 24.01.2018 for registration purpose. No communication was received from Chakradharpur Division regarding receipt or approval for transfer. The employee has again applied for transfer to Chakradharpur on 25.05.2020. The file was put up to competent authority, Sr. Divisional Mechanical Engineer for approval to forward the application, but the competent authority has not approved the file citing acute shortage of staff across important safety category posts in Carriage and Wagon cadre which is directly linked with safe running of trains. His application will be considered positively once the vacancy position in the cadre improves.

4. The copy of the respondent's reply was forwarded to the Complainant vide email dated 22.09.2022 for filing the rejoinder, but no rejoinder has been filed by the complainant.

5. **Hearing:** The case was fixed for hearing on 08.12.2022 which was re-scheduled to 27.12.2022 and again re-scheduled to 30.12.2022. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 30.12.2022. The following were present:

- i) Shri Braj Mohan Banra : **Complainant**
- ii) Ms. Asha Sneha, Sr. Div. Mechanical Engineer: **Respondent**

Observations /Recommendations:

6. Complainant submits that he is divyangjan with 65% locomotor disability. He submits that he is posted in Mechanical department of Trivendrum division, Chennai zone. Complainant claims that in May 2017 he applied for transfer from Trivendrum division to Chakradharpur division. The same was approved by Trivendrum division on 24.01.2018. Thereafter his file got misplaced. He again applied for transfer on 20.03.2020 since then his application is pending in Trivendrum division. He has prayed before this Court to recommend the Respondent to transfer him to his home town.

7. Respondent submits that the complainant had applied for Inter Regional Transfer to Chakradharpur Division of South Eastern Railway on 05.05.2017 as Tech. Gr. III on bottom seniority. The application was forwarded to the Railway concerned on 24.01.2018 for registration purpose. No communication was received from Chakradharpur Division regarding receipt or approval for transfer. The employee has again applied for transfer to Chakradharpur on 25.05.2020. The file was put up to competent authority, Sr. Divisional Mechanical Engineer for approval to forward the application, but the competent authority has not approved the file citing acute shortage of staff across important safety category posts in Carriage and Wagon cadre which is directly linked with safe running of trains. His application will be considered positively once the vacancy position in the cadre improves.

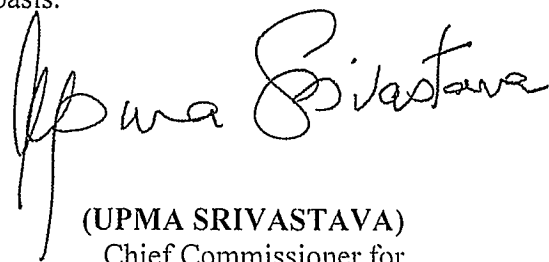
8. During online hearing Respondent informed this Court that the establishment has now considered the Complainant's transfer application. His application along with others' is under process. Complainant is the only divyangjan in the list. All the applications, including that of the

Mona Srivastava

Complainant have now been forwarded to obtain NOC from the division where the employees, including the Complainant, want to be transferred.

9. O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T read with O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T provides that employees with disabilities shall be posted near to their hometown. As far as present Complaint is concerned, this Court is satisfied with the fact that the Respondent has taken necessary steps to transfer the Complainant to his hometown. However, the Complainant's case must be considered on priority basis in accordance with DoPT O.Ms. mentioned above. This Court recommends that the Respondent shall forward the Copy of this Recommendation Order to the division where the Complainant wants to be transferred so that NOC can be obtained on priority basis.

10. The case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 17.01.2023



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13388/1022/2022

Complainant :

Shri Sony Joseph
2D, Gokulam Amrit Retreat
A.V. John Alunkal Road,
Vivek Nagar, K.P. Vallon Road, Kadavanthra
Ernakulam -682020
Email: sonyiob@yahoo.com

— R36659

Vs

Respondent:

The Chief Regional Manager
Indian Overseas Bank
Regional Office
5th Floor, Vettulatti Building
Jos Jn, MG Road, Ernakulam-682016
Email: 0824pad@iob.in; 0824rm@iob.in

— R36660

GIST OF COMPLAINT

The complainant, a person with 50% Visual impairment, working in Indian Overseas Bank has filed a complaint dated 17.07.2022 regarding retaining him or post him somewhere in Ernakulum city preferably near to his native place.

2. The complainant has submitted that he joined the Indian Overseas Bank as specialist cadre (IT) in August 2008 under Visually Impairment category. As per government guidelines, employees with disabilities are exempted from routine periodic transfers even on promotion and if it is inevitable, it should be done to nearby places and not to far-away places. His wife is working at the High Court of Kerala and her job is not a transferable job. He needs family support for daily conveyance due to his disability. He received transfer order on 16-07-2022 to Chevayur, Kozhikode which is 190 kms away from his home at Ernakulam where he is currently staying with his family. He was asked to join on 18-07-2022 after relieving on same day (that is on 16-07-2022). He further submitted that when he visited the Assistant General Manager at Regional Office, Ernakulam who is the concerned HRMD head at Regional Office Level, she told she has no time to listen to him and that she has a lot of work. She did not even consider his query as to why sufficient time was not given to a person like him for relieving. Her words caused him a lot of anguish and he is appalled by the treatment meted out by bank executives towards persons with disabilities. The executives are treating PwDs as some useless persons. They seem totally ignorant about the difficulties faced by such persons and about the fact that it is not their fault that they have these problems.

3. The complainant further submitted that in the years 2012, 2013, 2014 and in August 2018, he had taken up similar instances with bank. He had to submit representation to the bank each and every time

57

along with disability certificate, even though he has joined the bank in this category and the certificate in this regard has been furnished to the bank at the time of joining. He also submitted that the Bank asks for different format for different purposes.

4. The complainant further submitted that he had applied for a Staff Vehicle Loan (SVL) and there is a weird rule for the bank that the SVL applicant or his spouse should have a valid driving license. Visually impaired persons will not obviously have a valid DL. So, he asked for an NOC for obtaining a competitive loan from any other bank. He applied for this on 26.05.2022 and till date of filing the complaint he has not received any reply. This is blatant discrimination on the part of the Bank to Visually Challenged Persons.

5. The complainant is under treatment for various ailments, the root cause of which is not yet identified but is suspected to be fibromyalgia. He had to go to the casualty in various hospitals 3-4 times in recent months during night time for taking pain killer injections. Stress/tension makes fibromyalgia more severe and fibromyalgia in turn creates tension due to loss of sleep. He is planning to get an Ayurveda treatment too in the coming days. His cataract surgery had to be postponed due to the above-mentioned health issue. Also, his son is under treatment for ADHD and Asperger's syndrome and continuous follow-up is required. For the part of this treatment, both parents should be with him. His mother is a kidney patient and he is taking care of her and regular follow-up is required for the same.

6. The complainant further submitted that there are many persons in Ernakulam region and even in Regional Office who have completed more than 5 years in the same post even after issuance of transfer order and are not yet relieved due to some sort of nepotism. These persons do not have any type of disabilities. Thus, some blue-eyed boys/girls of the bank are treated in a certain manner whereas disabled persons are treated very badly. The complainant has submitted a representation before the Chief Regional Manager requesting to retain him or post him somewhere in Ernakulam city, preferably near to his house so that he will get the help of his family for his daily routine. The complainant has requested for intervention of this Court so as to find a permanent solution.

7. The matter was taken up with the Respondent vide letter dated 12.08.2022 under Section 75 of the RPwD Act, 2016.

8. In response, Chief Regional Manager of the Indian Overseas Bank, Regional Office, Ernakulam vide their reply dated 06.09.2022 submitted that the complainant joined in the service of the bank in the year 2008. He initially joined under the Regional Office of the bank at Kozhikode. Later, Regional Office, Kozhikode was aligned with Regional Office, Ernakulam for administrative convenience with effect from 2016. The complainant was transferred to the Regional Office, Ernakulam during 2014 as requested by him. He was promoted from Scale 2 to Scale 3 during 2015. While he was continuing with the Regional Office, Ernakulam, he was transferred to Regional Office Chennai vide HRMD order dated 18.07.2018. On the basis of the request submitted by the complainant he was permitted to continue at Regional Office, Ernakulam, as a general line officer. Accordingly, he was working as Senior Manager, first line Currency Chest, Ernakulam with effect from 21.08.2018.

9. The Regional Office issued transfer order on 15.07.2022 by which the complainant was transferred to one of the branches under the Ernakulam Region i.e. Currency Chest Chevayur-Kozhikode. The complainant gave a representation before the competent authority on 16.07.2022 and on receipt of his representation, his transfer order to Chevayur - Kozhikode was withdrawn and amended transfer order dated 18.07.2022 was issued by which he was transferred to Aluva Branch of the Bank. The complainant



was working continuously for a period of 6 years with erstwhile Kozhikode Regional Office of the Bank *and taking consideration of the disabilities and the ability of the complainant to handle his position as first line*, transfer order was issued posting him to Currency Chest Chevayur-Kozhikode, which is the next available currency chest for the Region.

10. The representation submitted by the complainant dated 16.07.2022 requesting to reconsider his transfer order was considered favourably and appropriate orders were issued to transfer him to Aluva Branch, which comes under Ernakulam city agglomeration. The said decision was taken after considering the complainant's problems and availability of vacancies according to his scale. The respondent submitted that the complainant was on medical leave since 18.07.2022 and they understood that the complainant has not yet acknowledged the receipt of the amended transfer order. As regards sanctioning of the vehicle loan, the complainant's request was placed before the top management as a special case and permission has been received on 14.07.2022.

11. The complainant has filed his rejoinder vide email dated 02.11.2022, and submitted that he is not satisfied with the comments submitted by the respondent. The complainant once again requested to this Court to give him posting as Senior Manager at Ernakulam Regional Office of the Bank in any one of the vacancies as are available or at the Ernakulam Main branch of the Bank in the existing vacancy, by withdrawing the present order of transferring him to Aluva.

12. **Hearing:** The case was fixed for hearing on 08.12.2022 which was re-scheduled to 27.12.2022 and again re-scheduled to 30.12.2022. The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 30.12.2022. The following were present:

- i) **Shri Sony Joseph : Complainant**
- ii) **Adv. Sujesh Kumar; Adv. Pauley Mathew: Respondent**

Observations /Recommendations:

13. The complainant has filed the Complaint relating to retention in Ernakulam city, his native place. By Order dated 16.07.2022 he was transferred to Chevayur, Kozhikode, which is 190 K.Ms. away from his hometown Ernakulam. The complainant has submitted that he joined the Indian Overseas Bank as specialist cadre (IT) in August 2008 under Visually Impairment category. He claims that his wife is working at the High Court of Kerala and her job is not a transferable job. He needs family support for daily conveyance due to his disability. He claims that when he approached the concerned authority for cancellation of transfer Order, no attention was given to his request.

14. Another grievance of the Complainant is related to Vehicle loan. The complainant submits that he had applied for a Staff Vehicle Loan (SVL) and as per the rule of the bank loan applicant or his spouse should have a valid driving license. Visually impaired persons will not have a valid DL. So, he asked for an NOC for obtaining a competitive loan from any other bank. He applied for this on 26.05.2022 and till date of filing the complaint he has not received any reply.

15. The Complainant further claims that his son is under treatment for ADHD and Asperger's syndrome and continuous follow-up is required. Therefore, it is important for him to live in Ernakulam so that he can discharge his responsibilities.



16. Complainant further alleges that many other employees are posted at same office for more than 5 years.

17. Respondent submits that the complainant joined in 2008. He initially joined under the Regional Office of the bank at Kozhikode. The complainant was transferred to the Regional Office, Ernakulam during 2014 on his own request. He was promoted from Scale 2 to Scale 3 during 2015. While he was continuing with the Regional Office, Ernakulam, he was transferred to Regional Office, Chennai however, he was retained in Ernakulam on his own request.

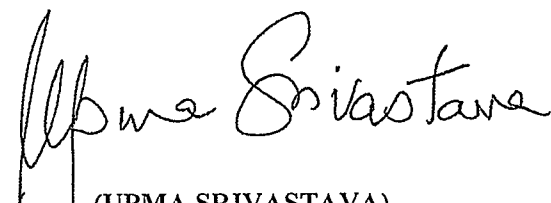
18. The Regional Office issued transfer order on 15.07.2022 by which the complainant was transferred to one of the branches under the Ernakulam Region i.e. Currency Chest Chevayur-Kozhikode. The complainant gave a representation before the competent authority on 16.07.2022 and on receipt of his representation, his transfer order to Chevayur - Kozhikode was withdrawn and amended transfer order dated 18.07.2022 was issued by which he was transferred to Aluva Branch of the Bank, which comes under Ernakulam city agglomeration. As regards sanctioning of the vehicle loan, the complainant's request was placed before the top management as a special case and permission has been received on 14.07.2022.

19. During online hearing the Complainant informed that loan issue has now been resolved. Relating to transfer issue the Complainant submitted that he has been transferred Aluva branch, which comes under Ernakulam city agglomeration. The Complainant expressed his dissatisfaction with his transfer to Aluva branch. Complainant submitted that the branch is situated at distance of 30 K.Ms. away from his home and hence he finds it difficult to travel such long distance because of his disability. Further the Complainant submitted that vacancies are available in Regional branch which is situated in Ernakulam and it is also near to his home.

20. This Court expresses satisfaction with the fact that the Respondent transferred the Complainant to branch situated within Ernakulam city. During online hearing, the Respondent also assured the Court that avenues will be found to transfer the Complainant to Regional branch, Ernakulam or to any other branch situated near to his home. Since this exercise will involve reshuffling of officers hence the Respondent assured that transfer will be done however the same will take some time. This Court recommends that considering the nature and percentage of disability of the Complainant, Respondent shall find avenues to transfer the Complainant to Regional branch situated in Ernakulam or to any such branch which is situated at minimum possible distance from the home of the Complainant.

21. **Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.**

22. The case is disposed off.


(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 17.01.2023



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13383/1022/2022

Complainant :

Dheeraj Kumar
Stenographer Grade-II
Office of the Commissioner of GST & Central Excise
Chennai Outer, Newry Tower, No. 2054-1
2nd Avenue Anna Nagar
Chennai-600040
Email: dhrana999@gmail.com
Mobile No: 9758245817

— R36657

Vs

Respondent:

The Principle Chief Commissioner of GST & Central Excise
Tamil Nadu & Puducherry Zone
26/1, Mahatma Gandhi Road
Nungambakkam Chennai-600034
Email: ccu-cexchn@nic.in
Contact No: 044-28331010

— R36658

GIST OF COMPLAINT

The complainant, a person with 50% Locomotor Disability, has filed a complaint dated 15.07.2022, requesting for issuing the Inter Commissionerate Transfer on Loan basis.

2. The complainant has submitted that he had joined as Stenographer Grade II in Central Excise & Customs, Chennai Outer Commissionerate in the Central Excise & Customs Department as a direct recruit in CCA Chennai Zone under CBEC (Now CBIC) on 14.08.2017, after qualifying SSC Steno Grade D Exam, 2015. Presently, the complainant is working as Stenographer grade II of GST & Central Excise, Chennai Outer Commissionerate under the Cadre Controlling Authority (CCA), Chennai Zone. The complainant has submitted that he is a native of Village Raipur malook Post Dhampur, District Bijnore-246761, Uttar Pradesh. It lies under the jurisdiction of GST & Central Excise Commissionerate, Meerut which falls under the jurisdiction of Chief Commissioner of GST & Central Excise, Meerut Zone.

3. The complainant has cited the verdict of Court of Chief Commissioner of Persons with Disabilities in case no. 12995/1022/2021 dated 12.04.2022 where the complainant had got Inter Commissionerate transfer on loan basis. The complainant has requested to this Court to give directive to the respondent to issue the verdict for him, for issuing the Inter Commissionerate Transfer on Loan basis to Commissioner of GST & Central Excise Meerut Commissionerate which would be of great help of him.

4. The matter was taken up with the Respondent vide letter dated 23.08.2022 under Section 75 of the RPwD Act, 2016.

5वीं मंजिल, एनआईएसडी भवन, प्लॉट नं०. जी-2, सेक्टर-10, द्वारका, नई दिल्ली-110075; दूरभाष: 011-20892364, 20892275
5th Floor, NISD Building, Plot No.G-2, Sector-10, Dwarka, New Delhi-110075; Tel.: 011-20892364, 20892275

E-mail: ccpd@nic.in ; Website: www.ccdisabilities.nic.in

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

55

5. In response, Addl. Commissioner (PCCO), Office of the Principle Chief Commissioner of GST & Central Excise, Tamilnadu & Pondicherry Zone, filed reply vide email/letter dated 10.10.2022 and submitted that the Stenographers Grade C & D are recruited through the Staff Selection Commission and selected candidates are allocated to different zones on their merit cum preference criteria. The complainant joined the department on 14.08.2017 on selection through SSC Stenographer Grade D exam 2015. All representation made by the employees belonging to the category of Persons with Disabilities are thoroughly reviewed and are being addressed to on time, keeping in view of the concern of the officers. This office has received the transfer representation through proper channel on 09.09.2022 and was under process.

6. The Inter Commissionerate transfer for any cadre is granted under the clause 'recruitment by absorption' mentioned in the Recruitment Rules of that particular cadre. For Stenographer Grade II cadre, in the Recruitment Rules 2011, the clause 'recruitment by absorption' is not mentioned. Hence, ICT in this grade is not being granted. Also, the transfer of the complainant across the zones on loan basis is not considered as per para-2 (iv) of the Board's letter dated 17.12.2020.

7. The respondent further submitted that the case which is referred to vide the Court notice dated 23.08.2022, i.e. of Shri Dinesh Kumar, Stenographer Grade II, was transferred on loan basis to Lucknow Zone as per the recommendations of the Chief Commissioner of Court of Persons with Disabilities. However, the recommendation is in personam to Shri Dinesh Kumar and hence, not applicable to other Stenographer in Gr. II. As such the request of the complainant for Inter Commissionerate transfer on loan basis to Meerut Commissionerate, cannot be acceded to as per the extant guidelines.

8. The complainant did not file the reply against the rejoinder letter dated 17.10.2022 issued by the Office of Chief Commissioner for Persons with Disabilities.

9. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on 03.01.2023. The following were present:

- i) **Shri Dheeraj Kumar: Complainant**
- ii) **Ms. Rajni Menon, Asst. Commissioner, Principal Chief Commissioner of GST, Chennai: Respondent**

Observations /Recommendations:

10. This court is inundated with the Complaints related to the issue of transfer. Consequently, this court has an opportunity to look into the issues and examine the arguments and objections filed by the Respondents in the past. This court is seizing this opportunity to delineate laws, guidelines and case laws relating to the issue of transfer of divyang employees.

11. First legislation which was enacted by the Parliament related to Persons with Disabilities was Mental Health Act, 1987. The Act contained provisions related to guardianship of Persons with Intellectual Disabilities. It fell short of addressing issue of discrimination with Persons with Disabilities. Thereafter in 1995, Parliament enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The 1995 Act was enacted to fulfil obligations which arose out of International Instrument. In 1992 Economic and Social Commission for Asia and Pacific Region adopted Proclamation on the Full and Effective Participation and Equality of People with Disabilities. India was signatory to the Proclamation and therefore, Act of 1995 was enacted. Some of the Objectives sought to be achieved by 1995 Act were:

- a. to fix responsibility of the state towards protection of rights, provision of medical care, education, training, employment and rehabilitation of Persons with Disabilities.



- b. to create barrier free environment for Persons with Disabilities,
- c. to remove any discrimination against Persons with Disabilities in the sharing of development benefits, vis-à-vis enabled persons

12. Thereafter, in year 2006, United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities ('CRPD'). India was one of the first countries to sign and ratify the treaty. With ratification of the CRPD, it became obligation of the state to enact new law in furtherance of the commitments under CRPD. In 2016, parliament enacted Rights of Persons with Disabilities Act, 2016. Some of the objectives sought to be achieved by this new Act are –

- (a) Respect for inherent dignity, individual autonomy including freedom to make one's own choices and independence of person;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

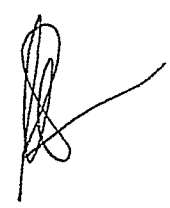
13. Enacting statute is first step towards achieving the aforesaid objectives. To achieve these objectives in practical sense, executive formed certain guidelines from time to time relating to different aspects of employment, for instance, recruitment, nature of duties, work environment, promotion, transfer etc.

14. Since in this order this court is concerned with issue of transfer only, hence it is important to list different types of issues and objections which are raised by the respondent from time to time and further to mention related provisions and case laws on the point.

15. Issues related to transfer and posting to divyang employees may be divided into three categories:-
- a) Posting of divyang employee at native place,
 - b) Exemption from routine transfer of divyang employee,
 - c) Posting of employee who serves as care giver of divyang dependant.

STATUTORY PROVISIONS AND GUIDELINES

16. a) ARTICLE 41 of INDIAN CONSTITUTION – The state shall make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and **disablement**.
- b) SECTION 20 (5) OF RPWD ACT, 2016 – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.
- c) SECTION 20 (2) OF RPWD ACT, 2016 – Sub Section 2 of Section 20 lays down that government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to divyang employees.



- d) O.M. No. 302/33/2/87 dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to 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 even be transferred on promotion if vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigences, even then he must be kept nearest to his original place and in any case he should not be transferred at far off or remote place of posting.
- e) O.M. No. 14017/41/90 dated 10.05.1990 issued by DoP&T – This O.M. provides that employees belonging to Group C and D must be posted near to their native place.
- f) O.M. No. 14017/16/2002 dated 13.03.2002 issued by DoP&T – This O.M. clarifies rule laid down in O.M. dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D must be posted near to their native place. O.M. of year 2002 further extended this rule for employees belonging to group A and B as well.
- g) O.M. No. 36035/3/2013, dated 31.03.2014 issued by DoP&T – This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under heading 'H' of the O.M. two guidelines with respect to transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.
- h) O.M. No. 42011/3/2014, dated 06.06.2014 issued by DoP&T – This O.M. is related to posting of government employees who is care giver of Divyang child. Considering challenges which are faced by care giver of divyang child, this O.M. provides that care giver of divyang child may be exempted from routine transfer/rotational transfer.
- i) O.M. No. 42011/3/2014, dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that government employee who serves as main care giver of dependant daughter/son/parents/spouse/brother/sister may be exempted from exercise of routine transfer.

ANALYSIS OF THE PROVISIONS & GUIDELINES

17. It is noteworthy that even before Section 20(5) was conceptualised, DoP&T and other departments of the government framed policies relating to exemption of divyang employees from routine transfer and transfer at native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which he can achieve the desired performance and where their services can be optimally utilised. Combined reading of all the guidelines further makes it clear that government's approach on the issue of transfer is progressive and forward looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in year 2002. Similarly, Ministry of Finance (MoF in short) created an exception for divyang employees in year 1988, long before 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

68

18. Ever. in case of employee who serves as care giver of divyang dependant. approach is progressive. Till 2018, care giver of divyang dependent child was exempted from routine transfer. By DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

19. Objective behind exempting care giver must also be understood. DoP&T O.M. dated 06.06.2014, rightly lays down that rehabilitation of divyang dependant is indispensable process which enables divyang person to reach and maintain physical, sensory, intellectual, psychiatric and social functional levels. If care giver of such person would be subjected to routine periodic transfer, it will have adverse impact on the rehabilitation process of divyang dependent. It is certain that it is utmost duty of the government employee to serve with utmost dedication, however, this fact does not take away his right to take care of his divyang dependent. Hence, objective behind DoP&T guidelines is to strike balance between the two aspects.

OBJECTIONS AND ISSUES RAISED BY RESPONDENTS IN PREVIOUS SIMILAR COMPLAINTS BEFORE THIS COURT AND CASES BEFORE HON'BLE HIGH COURTS, CENTRAL ADMINISTRATIVE TRIBUNALS

20. **ISSUE** – Exempting divyang employee from transfer if Service Rules prescribe for mandatory transfer.

21. A case was filed before Hon'ble Delhi High Court in which Respondent Bank submitted that divyang employee cannot be exempted from routine transfer at remote rural branch because as per Service Rules for promotion every employee has to serve for fixed period at rural branch. ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020

22. Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employee must be exempted from routine transfer and posting at rural location. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employee must be exempted from routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural location.

23. **ISSUE** – Since, transfer is an incidence of service should employee follow transfer Orders without exception?

24. This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. Court held that this principle is not applicable in cases pertaining to transfer of divyang employees. Court held that when employee is agitating his rights under RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

25. **ISSUE** – Can an employee be exempted if he was intimated about transferable nature of the job at the stage of joining?

26. Respondents often submit that the employee was intimated at the time of initial recruitment about transferable nature of the job hence, he cannot be exempted from transfer. To support this contention Respondents, rely upon case laws of Hon'ble Supreme Court. Hon'ble court in UNION OF INDIA v. S.I. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO v. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and courts must not interfere in transfer issues unless such transfer is vitiated by *mala fides* or is made in violation of transfer policy.

27. The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005. judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017. Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When divyang employee is challenging his transfer under RPwD Act, 2016 or PwD Act, 1995 or various guidelines which are passed from time to time, such challenge is under special statutes which are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issue. Court further laid down that when transfer is not challenged under transfer policy, government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

28. In V.K. BHASIN judgment, Delhi High Court also held that through in transfer matters court does not sit as court of appeal, but court cannot also lose sight of special legislation, rules and O.Ms. enacted for Divyangjan because objective of these provisions and O.Ms. is to fulfil the international commitments and give equal treatment to Persons with Divyangjan.

29. **ISSUE** – Various O.Ms. related to transfer & posting of divyang employees are of recommending nature and are not binding on the government establishments.

30. Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of Hon'ble Supreme Court in judgments of Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say that all these guidelines are also framed in furtherance of Article 41 of Indian Constitution.

31. **ISSUE** – In case if employee who is care giver of divyang dependent is transferred at any place which has good medical facilities, whether exemption guidelines would not be applicable?

32. O.Ms. dated 06.06.2014 and dated 08.10.2018 and hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is 'rehabilitation process' of the divyang child. Support system and rehabilitation are indispensable process which help divyang to maintain physical, psychological and social levels. Support system does not only mean availability of doctors and medicines, O.M. dated 06.06.2014 provides meaning of 'support system' as a system which comprises of preferred linguistic zones, school/academic levels, administration, neighbours, tutors, special educators, friends and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of 'support system'. Reason for exempting care giver of divyang dependent is to provide conducive and caring environment and not just medical facilities. Needless to say that when care giver would be subjected to exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

33. It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting care giver from routine transfer. Moreover, in 08.10.2018 O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependant'.

34. Other provisions which are helpful in understanding the intent of Rights of Persons with Disabilities Act, 2016 are -:

4. Women and children with disabilities.—(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others. (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”

16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities

24. Social security.—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

27. Rehabilitation.—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

38. Special provisions for persons with disabilities with high support.—(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

2(d) - “care-giver” means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability.

35. Intention of RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions makes it clear that legislature intended to provide supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of care giver of divyang dependent is framed to achieve intentions and objectives of Rights of Persons with Disabilities Act, 2016 and hence these guidelines are binding on the government establishments.

SOME OTHER CASE LAWS ON THE ISSUE OF TRANSFER OF DIVYANG EMPLOYEE

36. Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities: Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to

Mumbai. He approached Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. Bank failed to implement the Order of CCPD. Employee approached Hon'ble High Court for implementation of CCPD Order. Bank challenged CCPD Order and opposed the petition and contended that promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that grievance of divyang employees must be considered with compassion, understanding and expediency. Hon'ble court held that the employee must be retained in Jaipur branch even after promotion.

37. Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and was posted in Daltonganj, Jharkhand. Petitioner approached hon'ble High Court for quashing of transfer orders and retention in Ranchi. Respondent bank relied upon its transfer policy and contended that at the time of promotion employees are transferred. Further it was contended that O.Ms. issued by various ministries and departments are of directory nature and are not binding. Hon'ble High Court rejected Respondent bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

PRESENT CASE:

38. Complainant submits that he was appointed in 2017 on the post of Stenographer and was posted in Cadre Controlling Authority, Chennai Zone. He submits that his hometown is Bijnor, U.P. which comes under Chief Commissioner of GST & Central Excise, Meerut Zone. He prays before this Court for transfer on loan basis to Meerut zone from Chennai zone. He has given reference of another Complaint in which CCPD recommended to transfer the Complainant.

39. Respondent replied that Inter-Commissionerate transfer in the cadre of Stenographer Grade-II in the Respondent establishment is not allowed. Further request of the Complainant for transfer on loan basis was not accepted because of instructions issued in Board letter dated 17.12.2020. Further the Respondent submits that the recommendation-order of CCPD referred by the Complainant is not applicable because each case is decided on its own merit and hence there is no certainty that the Order will be applicable in the present Complaint also.

40. During online hearing Respondent assured this Court that if the Complainant will apply for deputation, the Respondent will give NOC after following due procedure.

41. Taking into consideration the assurance forwarded by the Respondent and willingness of the Complainant to be posted on loan basis, this court recommends that the Respondent shall transfer the Complainant on loan basis to Meerut zone. Further this Court recommends that the Complainant can apply for deputation and the respondent shall ensure that NOC is given to him after following due procedure, without any inordinate delay.

42. Further this Court is inclined to attract the kind attention of the Respondent to Section 20(5) of Rights of Persons with Disabilities Act, 2016. The provision levies duty on the Respondent to frame separate transfer and posting policy for divyang employees hence this Court recommends that the Respondent shall frame separate transfer and posting policy for divyangjan in accordance with the statutory provisions, judgments of hon'ble Supreme Court and High Courts and government guidelines delineated above.



43. Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.

44. The case is disposed off.



(UPMA SRIVASTAVA)
Chief Commissioner for
Persons with Disabilities

Dated: 17.01.2023



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13436/1022/2022

Dispatch No:

Complainant:

Md. Nayeem S/o Md. Ishak
Door No. 423/F, PwQ Area Railway Quarters
Samson Road, Ayanavaram
Chennai-600023
Email: nayeemchennai23@gmail.com

- R36652

Versus

Respondents:

The Secretary,
Ministry of Railway
Rail Bhavan, Raisina Road, New Delhi-110001
Email: secyrb@rb.railnet.gov.in

- R36653

Respondent-1

The General Manager
Southern Railway,
Park Town, Chennai-600003
Email: gm@sr.railnet.gov.in
Contact No: 044-25331765

- R36654

Respondent-2

The Chief Workshop Manager
Loco Works, Ayanavaram,
Chennai/Southern Railway
Email: store@sr.railnet.gov.in
Contact No: 044-26741723

- R36655

Respondent-3

The Chief workshop Manager
C&W Workshop, Liluah-Howrah,
Eastern Railway, West Bengal
Email: cwnliluah@gmail.com
Contact No: 033-26546449

- R36656

Respondent-4

Sub: Complaint dated 25.08.2022, of Md. Nayeem, working as Tech-I, (CR-3080) Loco Works/ Perambur, S. Railway, Chennai, regarding his relieving on Inter Railway Transfer to Workshop @ Liluah, Howrah, West Bengal, Eastern Railway as Assistant on bottom seniority and instructions to be issued to the Chief Workshop Manager, C&W Workshop, Liluah, Howrah, West Bengal, Eastern Railway for not filling up the vacancy.

Please refer to the above-mentioned complaint and this Court's Notice dated 09/09/2022.

2. Dy. Chief Personnel Officer/R&W, Personnel Branch, Southern Railway (Respondent no.2) vide letter No. P(S)171/RB/SCT/2022 dated 04.11.2022 has informed that Md. Nayeem has been relieved to report CWM/C&W Workshop, Liluah, Eastern Railway on 14.10.2022 based on his request for inter Railway request Transfer on bottom seniority. The relieving order has been received by the employee from APO/C&LW/PER on 14.10.2022.

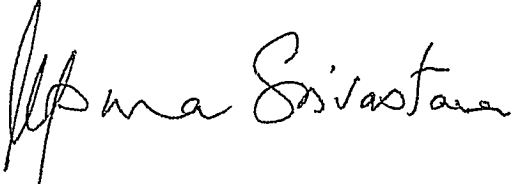
3. Dy. CME/LW/PER, O/o the Chief Work shop Manager, Loco Works, Perambur, S. Railway, Chennai (Respondent no. 3) vide letter No. Dy. CME/inter railway transfer/2022 dated 07.11.2022 has informed that Md. Nayeem has been transferred and relieved to Chief Workshop Manager, C&W, Workshop, Liluah, Howrah, West Bengal, Eastern Railway on 14.10.2022.

4. Assistant Personnel Officer, O/o the Chief Works Manager, C&W Workshop, Eastern Railway, Liluah, Howrah (Respondent no. 4) vide letter No. LE.236/2/Transfer/Incoming/D/Pt.VIII dated 12.11.2022 has informed Md. Nayeem has been released by his parent shop i.e. Loco Works, Ayanavaram, Chennai on 14.10.2022 and he joined at C&W Workshop Liluah on 21.10.2022 vide Office Order No. LE 236/Transfer/Incoming/Pt. V dated 21.10.2022.

5. Md. Nayeem, complainant vide email dated 15.11.2022 has submitted that his complaint dated 25.08.2022 has been redressed and requested for withdrawing the said complaint.

6. In view of the above, no further intervention is required in the matter as the complainant's complaint has been redressed and the complainant himself has sought the permission to withdraw the complaint.

7. The complaint is accordingly disposed off.



(UPMA SRIVASTAVA)

Chief Commissioner for Persons with Disabilities

Dated 17.01.2023



सत्यमेव जयते

न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13441/1141/2022/151254

Complainant: Shri Manoj Kumar Mishra,
Jagapur Mishran, Thana: Gopiganj,
Tehsil: Gyanpur, District: Bhadohi (UP)
Mobile: 9920103830

- R36672

Respondent: The Branch Manager,
State Bank of India,
Padar Road, 39, Kalpataru, Dr G Deshmukh Marg,
Pedder Road, Mumbai - 400026
Email: <sbi.00510@sbi.co.in>

- R36673

Complainant: 40% Locomotor disability

GIST of the Complaint:

प्रार्थी श्री मनोज कुमार मिश्रा का अपनी शिकायत दिनांक 29.07.2022 में कहना है कि उन्होंने भारतीय स्टेट बैंक, शाखा पैडर रोड बम्बई कोड नं: 40000026 से ग्रुप हेल्थबीमा पॉलिसी नं: 0000000013011310 सदस्य संख्या एस.बी.आई.जी. 20048251 दिनांक 04.04.2019 लिया एवं वह प्रतिवर्ष नवीनीकरण हुआ करता था।

2. प्रार्थी का आगे कहना है कि उन्होंने दिनांक 02.04.2021 को भारतीय स्टेट बैंक शाखा, गोपीगंज, जनपद भदोही में नवीनीकरण हेतु कार्ड दिया तो उपस्थित शाखा प्रबंधक व बैंक कर्मचारी ने दिनांक 05.04.2021 को नवीनीकरण न करके नया पॉलिसी नं: 0000000022800120 सदस्य संख्या 0000000041648056 जारी कर दिया।

3. प्रार्थी का आगे कहना है कि तबीयत खराब होने ही वजह से उन्हें अलाएन्स हॉस्पिटल, वाराणसी में भरती होना पड़ा, परन्तु डिसचार्ज के समय, हॉस्पिटल ने बीमा कार्ड लेने से इंकार कर दिया और कारण बताया कि बैंक कर्मचारी ने नवीनीकरण न करके नया कार्ड बना दिया है। उनकी पत्नी ने कर्ज लेकर 45073 रूपये एवं 20,000 रूपये अन्य जमा किये तब जाकर प्रार्थी को डिसचार्ज किया गया। प्रार्थी ने आरोप लगाया है कि जब शाखा प्रबंधक भारतीय स्टेट बैंक, गोपीगंज से बात कि तो भद्दी-भद्दी गाली देकर बैंक से निकाल दिया।

....2....

4. The matter was taken up with the Respondent vide letter dated **08.09.2022** under Section 75 of the RPwD Act, 2016. But despite reminders dated 26.09.2022 & 21.10.2022, no response has been received from the respondent. Therefore, hearing scheduled on **03.01.2023**.

Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **03.01.2023**. The following were present:

- Shri Manoj Kumar Mishra - Complainant
- Ms. Rupa Patwardhan, Chief Manager (Law) and Ms. Zenat Bamboowala, Chief Manager Ader Road Branch on behalf of respondent

Observation/Recommendations:

5. Complainant submits that he bought group health insurance policy No. 0000000013011310 from the Respondent establishment. He claims that on 02.04.2021 he applied for renewal of the policy however the Respondent establishment issued another policy instead of renewing the older one. Later, when he incurred medical expenses and applied for reimbursement he was informed that the same is not possible because instead of renewing the policy, new policy has been issued.

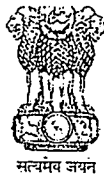
6. During online hearing, Respondent informed this Court that the Complainant has not presented proper facts. Initial policy was issued in favor of the Complainant in 2019 which got auto renewed in 2020. Thereafter in 2021 because of insufficient balance in the account of the Complainant, delay happened in auto renewal of the policy.

7. This Court concludes that the Complainant has not made any case of discrimination on the basis of disability. Intervention of this Court in the present Complaint is not warranted.

8. The case is disposed off.


(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 18.01.2023



सत्यमेव जयते

77

न्यायालय मुख्य आयुक्त दिव्यांगजन

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: 13421/1023/2022

Complainant: Shri Rakesh Kumar Sharma
352 B, Pocket 2, Phase - I
Mayur Vihar, Delhi - 110091
E-mail: <advrks1909@gmail.com>
Mob: 9312266434

137206

Respondent: The MD/CEO
IDBI Bank, Corporate Office
IDBI Tower, WTC Complex, Cuffe Parade
Mumbai - 400005
Email: <md.ceo@idbi.co.in>

137207

Complainant: 49% locomotor disability

GIST of the Complaint:

The complainant Shri Rakesh Kumar Sharma, filed a complaint dated **26.07.2022** regarding promotion with retrospective effect providing a work profile which is conducive for employees with disabilities etc.

2. He has submitted that during the course of employment in the Bank, he has faced lots of discrimination, vindictiveness and insensitivity towards employees with disabilities. It is not easy to depict that the bank is fuelled by regrettable prejudice and bigotry towards the employees with disability. It is evident from the total strength of PwD Officer at Senior Level in the bank. As on date strength of senior officers (Grade E and above) in the Bank who are belonging to PwD Category are **NIL**. The Bank has unilaterally decided not to promote the employees with disabilities. He has been called for the internal promotion from Manager Grade (B) to Assistant General Manager Grade (C) through merit channel according to the instructions contained in the notification for commencement of promotion process dated March 9, 2022. Prior to this, he has been called for the same from the year 2016 to 2021. He has also raised the following issues:-

- Transfer from Mayur Vihar Branch to a branch which is not accessible for employees with disabilities;
- Discrimination in APAR by Supervisor;
- Not providing a proper seat by the Branch Head Noida 51 Branch.

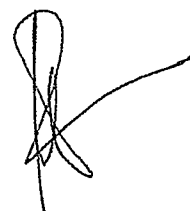
3. In view of above, he has requested for:

- a. pass an order in favour of him to be promoted to Grade "C" as Assistant General Manager with retrospective effect.
- b. pass an order/recommendations to the Bank/respondent to modify/removal the criteria of humiliating questions during the course of interview which is against the humanity and the principal of natural justice.
- c. pass an order in favour of him by providing a work profile which is conducive for the persons with disabilities.
- d. pass an order for injunction in favour of him not to transfer in remote or far off place.
- e. pass an order in favour of him to provide an opportunity to work in Legal Department.
- f. pass an order in favour of him for not to pressurised to work in field or not to down profile.
- g. pass an order to the bank to allow him to attend the hearings before the Chief Commissioner for Disabilities.
- h. The present case shall not be disposed-off until the recommendations/directions are complied with.

4. The matter was taken up with the Respondent vide letter dated **01.09.2022** under Section 75 of the RPwD Act, 2016.

5. In response, Chief General Manager, IDBI Bank vide letter dated 28.10.2022 has inter-alia submitted that IDBI Bank being re-categorized as Private Sector bank adheres to the Govt. of India guidelines issued from time to time applicable to the banks including guidelines issued on recruitment process. Ministry of Finance has advised banks to decide the promotion policy with the approval of the Board of the Banks. He further submitted that though IDBI Bank is not a Government establishment as defined under the Rights of Persons with Disabilities Act, yet the Bank is providing 4% reservation as per roster points in Direct Recruitments in accordance with extant Government directives. All the contentions made by the complainant against IDBI Bank are denied vehemently since the same are false and illusory.

6. The respondent denied the contentions of the complainant regarding promotion process and submitted that the promotions in IDBI Bank is effected through a merit list of officers based on marks secured in performance appraisal rating, written test/psychometric test, personal interview, service record etc. is prepared based on the descending order of total marks secured by the candidate and accordingly, equal number of candidates vis-a-vis approved vacancies are considered for promotion/empanelled for promotion. In terms of clause 07 of Transfer Policy of the Bank, the Bank may grant exemption to such officers, keeping in view the nature of disabilities based on whether or not it is possible for them to serve in a rural/semi urban Branch on a case to case basis. Hence, the complainant's contention is wrong and misconceived. The respondent has prayed to accept and record the submission made by the respondent and the complaint may be dismissed as not maintainable.



7. Complainant vide rejoinder dated 15.11.2022 has concisely submitted that:

- The Respondent Bank wilfully mislead and provided wrong and incomplete information to the Hon'ble Court.
- That the Respondent Bank has unilaterally decided not to promote the PwD Persons.
- The Respondent Bank refused to implement the guidelines of Hon'ble Supreme Court and GOI vide Office Memorandum No. 36012/1/2020 Estt. (Res. II) dated 17.05.2022. IDBI Bank submitted false statement regarding element 75% of direct recruitment in Grade C and above. There is no piece of evidence of direct recruitment of more than 75% in Grade C and above is available. There is no advertisement or appointment orders available.
- That the Respondent Bank submitted false statement regarding appointment of petitioner in Rural Branch.
- That the Respondent Bank is very adamant and wilfully doesn't even follow the directions of the court.

Hearing: The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **20.12.2022**. The following were present in the hearing :

- Shri Rakesh Kumar Sharma – (Complainant)
- Shri Ugan Rashi, Chief General Manager (HR) and Shri Sushant Toppo, General Manager (HR) (for respondent)

Observation/Recommendations:

8. Complainant has raised grievances related to multiple issues which are mentioned below-:
 - a. Promotion – Complainant submits that since 2016 he has appeared in promotion examination for the post of Assistant General Manager (Grade C) on number of occasions. Each time he was deliberately failed in interview round. On this issue Complainant further submits that the management of the Respondent bank is in habit of declining promotion to divyang employees. Between 2016 and 2020, the Respondent promoted only 11 divyang employees from Grade B to Grade C against 3400 vacancies (approximately).
 - b. Transfers – Complainant submits that in last 14 years of service he has been transferred 11 times.
 - c. APAR Grading – Complainant claims that less marks are awarded in APAR because of his disability. Complainant claims that he was informed by the supervisor that marks equivalent to non-divyang employees cannot be awarded to him because he is disabled.
 - d. Non appointment to the post in Legal Department – Complainant claims that in 2018 he applied for the post in Legal Department, however his candidature was rejected for want of minimum qualification and he was given reason that in ORACLE HRMS portal the Complainant has not updated his educational status. Complainant claims that he possesses Bachelor Degree in Law and he had minimum qualification required for the appointment to the post.
 - e. Present Posting – Complainant submits that at his present place of posting in Noida branch he has not been given proper chair and table to do his work. Washrooms at this location are situated on the first floor.
9. Respondent submits that the Complainant was appointed as 'Hindi cum English' typist in 1998. Thereafter, he was promoted as Grade A officer in 2007. Thereafter he was

promoted as Grade B officer in 2012. Further the Respondent filed Reply on specific issues which are mentioned below -:

- a. Promotion – Respondent submits that the Complainant applied for the promotion to the post of Grade C officer. He was called for interview round on merit basis. Since he could not qualify the interview hence he was denied promotion. Further Respondent submits that there is provision to prefer appeal against the decision of non appointment. Complainant preferred the appeal but the same was rejected on merits.
- b. Transfer – Respondent submits that the allegations levied by the Complainant are absolutely false. Complainant has been posted in Delhi/NCR since 2007. From 2007 till 2012 he was posted in Delhi then from 2012 till 2016 he was posted in Greater Noida. Respondent submits that as per the Rules of Respondent establishment, divyang employees are granted exemption from rotational transfer.
- c. Non appointment in Legal Department – Respondent submits that appointment was denied because the Complainant failed to update his education status in ORACLE HRMS portal. It is responsibility of every employee to update the educational status on the portal.
- d. Present Posting – Respondent submits that the grievance related to present posting have been duly noted and enquiry has been set up.

10. During online hearing the Complainant submitted that issues related to sitting arrangement has now been resolved and expressed his intention to press 'Promotion' issue only. Complainant reiterated his claim that the Respondent establishment denies promotion to divyang employees. Respondent also reiterated its submissions that the promotion from Grade B to Grade C posts is not dependent on interview marks alone. Marks scored in written exam and marks awarded on the basis of APAR gradings are also taken into consideration.
11. The claim of the Complainant is related to promotion from the post of 'Manager' to 'Assistant General Manager'. This Court specifically asked the Respondent how many total number of employees and divyang employees were promoted from post of 'Manager' to 'Assistant General Manager' in year 2022-23. Respondent submitted on record that total 33 employees were promoted from 'Manager' to 'Assistant General Manager' in year 2022-23 out of which 6 employees were divyangjan.
12. From above, it is evident that the Respondent promoted 6 divyang employees out of 33 employees from 'Manager' to 'Assistant General Manager'. This contradicts the claims of the Complainant. Further, the Complainant has not submitted any evidence to prove that the Respondent has discriminated against him in promotion from the post of 'Manager' to 'Assistant General Manager'. This Court concludes that the Complainant has not made a case of discrimination in promotion on the basis of disability. Intervention of this Court in the present Complaint is not warranted.
13. The case is disposed off.



(Upma Srivastava)
Chief Commissioner for
Persons with Disabilities

Dated: 23.01.2023



नान्यमव जयन

Extra

81

Case No.13351/1011/2022

न्यायालय मुख्य आयुक्त दिव्यांगजन
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. 13351/1011/2022

Complainant:

Shri Tijo M Thomas,
Vadakkemulanchira, Vettimukal P O.
Kottayam-686631; Email: tijomthomas86@gmail.com

136996

Respondent:

The Chairman,
Staff Selection Commission,
CGO Complex, Block No.12,
Lodhi Road, New Delhi-110003
Email: chairmanssc@gmail.com; sscushqpp1@gmail.com

136997

Affected Person: The complainant, a person with 40% Mental Disability

1. Gist of Complaint:

1.1 The complainant filed a complaint dated 13.06.2022 against non-selection in Combined Graduate Level Examination 2019 [GL-2019] despite the post identified in subcategory for Mental Illness by SSC-KKR. The complainant had attended the document verification in SSC, KKR Regional Office and during this stage of recruitment, all candidates must provide the preference options based on the notified vacancies in various user Departments. He submitted his preferences for all the vacancies reported under the PwD-others category. His category of disabilities was identified as suitable for most of the posts having a reported vacancy under the PwD-others. The SSC had denied his right to submit his preferences during document verification for the posts having notified vacancies under the PwD-Others category except for one post, Assistant Section Officer, Ministry of Electronics and Information Technology. This post does not have any vacancies listed in the vacancy list for the category PwD-Others and hence, SSC did not include his name in the final selection list which was released on April 8, 2022.

1.2 Apart from above, the complainant has submitted that he got a total mark of 322.192 in the CGL-2019 examination and the total mark of the last selected candidate in the PwD others category was 289.999 based on the final result declared on 08.04.2022.

2. Submissions made by the Respondent:

2.1 The Respondent in its reply dated 01.09.2022 has inter-alia submitted that subsequent to enactment of RPwD Act, 2016, SSC vide letter dated 25.05.2018 had requested all the indenting user departments to identify and inform the Commission

1 | Page

about the suitability of post for newly identified categories of disabilities. However, till date only some of the Departments like DoP&T, M/o Railways, M/o External Affairs, AFHQ, CGDA, CA&G etc. have identified the posts suitable for newly identified categories of disabilities as per RPwD Act, 2016, details of which have been included in the Notification of CGLE-2020 dated 29.12.2020 and subsequent corrigenda.

2.2 At the stage of Document Verification of CGLE-2019, SSC had decided that as per the provisions of the Notice of the Examination of CGLE-2019, suitability of posts under CGLE-2019 for various disabilities and categories under RPwD Act, 2016 would be determined from the information given by the User Departments for CGLE-2020, which were duly incorporated in Notice of Examination of CGLE-2020 and subsequent corrigendum issued for the said examination. Thus, Regional Offices of the Commission were intimated the decision of the Commission vide letter dated 31.08.2021. Till Document Verification of CGLE-2019 i.e. September, 2021, only post of Assistant Section Officer in Ministry of Electronics and Information Technology (MEITY), was informed to be identified suitable for Mental Illness by User Departments. Accordingly, SSC KKR acted upon in case of the complainant Shri Tijo M Thomas and a candidate of CGLE-2019.

2.3 SSC further submitted that the posts mentioned in the Notification dated 04.01.2021 are generic, and all of the posts mentioned in the CGLE notification are not mentioned in the Notification dated 04.01.2021. Some of the Departments e.g. CBIC have some reservations on the Notification dated 04.01.2021 and they had sought clarifications from Department of Empowerment of Persons with Disabilities. Thus, SSC decided that in absence of clarity on the posts and respective identified disabilities in the Notification dated 04.01.2021, it might not be feasible to implement it.

2.4 Further, SSC referred to this Court's Order dated 06.12.2021 in Case No.12788/1011/2021 (Sh. Amit Yadav Vs SSC) and Order dated 09.12.2021 in Case No.12891/1011/2021 (Shri Bishwadip Paul Vs SSC) wherein it was observed by this Court that the vacancies advertised before 04.01.2021 are not governed by MoSJE Notification dated 04.01.2021, hence, no intervention is warranted. The Notice of Examination of CGLE-2019 was published on 22.10.2019 i.e. before the issue of the Notification dated 04.01.2021 and hence, the Notification dated 04.01.2021 should not be made applicable to the Notice of CGLE-2019.

2.5 SSC also submitted that the candidate has also filed the case before the Hon'ble CAT, Ernakulam Bench, vide O.A. No.313/2022.

3. Submissions made in Rejoinder:

The complainant filed his rejoinder dated 16.09.2022 and inter-alia submitted that if the notification dated on 04.01.2021 issued by DEPWD was not applicable for CGLE-2019, why should the SSC have specifically allowed the Department of MEITY to incorporate the notification dated 04.01.2021 issued by DEPWD. Further, in a recent corrigendum of CGLE-2020 dated 12.08.2022, SSC has incorporated the notification dated 04.01.2021 and followed the RPWD Act 2016 with full spirit. This

raises the question of why the notification dated 04/01/2021 was made specifically applicable for CGLE-2020. CGLE-2019 notification was issued on a date after the RPWD Act 2016 came into force on 19.04.2017. Hence, it is the utmost duty and responsibility of all government establishments to implement the law passed by the legislature.

4. **Hearing:** The case was heard via Video Conferencing by Chief Commissioner for Persons with Disabilities on **07.11.2022**. The following persons were present during the hearing:

- (1) Shri Tijo M Thomas, the complainant in person along with Shri Tibin Thomas.
- (2) Shri Ram Sagar, Under Secretary; Shri Rahul Kumar Singha, Section Officer, for the Respondent.

5. **Observations & Recommendations:**

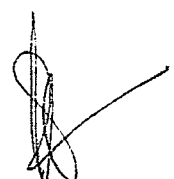
5.1 The Complaint is related to non-selection in Combined Graduate Level Examination 2019 [GL-2019] despite the post identified in subcategory for Mental Illness by SSC-KKR. The complainant had attended the document verification in SSC, KKR Regional Office and during that stage of recruitment, all candidates were asked to provide the preference options based on the notified vacancies in various user Departments. He submitted his preferences for all the vacancies reported under the PwD - Others category. His category of disabilities was identified as suitable for most of the posts having a reported vacancy under the PwD (Others). The SSC had denied his right to submit his preferences during document verification for the posts having notified vacancies under the PwD - Others category except for one post, i.e. Assistant Section Officer, Ministry of Electronics and Information Technology. This post does not have any vacancies listed in the vacancy list for the category PwD-Others and hence, SSC did not include his name in the final selection list which was released on April 8, 2022.

5.2 Complainant further submitted that following posts are still vacant and his candidature can be considered against these posts:—

Assistant; Accountant; Upper Division Clerk; Div. Accountant.

5.3 The Respondent submitted that subsequent to enactment of RPwD Act, 2016, SSC vide letter dated 25.05.2018 had requested all the indenting user departments to identify and inform the Commission about the suitability of post for newly identified categories of disabilities. However, till date only some of the Departments like DoP&T, M/o Railways, M/o External Affairs, AFHQ, CGDA, CA&G etc. have identified the posts suitable for newly identified categories of disabilities as per RPwD Act, 2016.

5.4 At the stage of Document Verification of CGLE-2019, SSC had decided that as per the provisions of the Notice of the Examination of CGLE 2019, suitability of posts under CGLE-2019 for various disabilities and categories under RPwD Act, 2016 would be determined from the information given by the User Departments for CGLE-2020,



which were duly incorporated in the Notice of Examination of CGLE-2020 and subsequent corrigendum issued for the said examination. Thus, Regional Offices of the Commission were intimated the decision of the Commission.

5.5 Till Document Verification of CGLE-2019 i.e. September, 2021, only post of Assistant Section Officer in Ministry of Electronics and Information Technology (MEITY), was informed to be identified suitable for Mental Illness by User Departments. Accordingly, SSC KKR acted upon in case of the complainant Shri Tijo M Thomas, a candidate of CGLE-2019.

5.6 SSC further submitted that the posts mentioned in the Notification dated 04.01.2021 are generic, and all of the posts mentioned in the CGLE notification are not mentioned in the Notification dated 04.01.2021. Some of the Departments e.g. CBIC have some reservations on the Notification dated 04.01.2021 and they had sought clarifications from Department of Empowerment of Persons with Disabilities. Thus, SSC decided that in absence of clarity on the posts and respective identified disabilities in the Notification dated 04.01.2021, it might not be feasible to implement it.

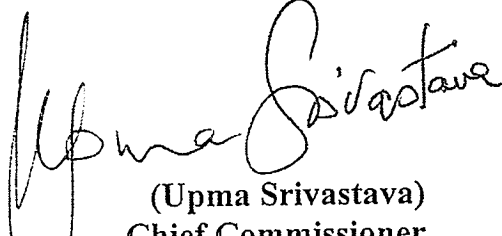
5.7 Further, SSC referred to this Court's Order dated 06.12.2021 in Case No.12788/1011/2021 (Sh. Amit Yadav Vs SSC) and Order dated 09.12.2021 in Case No.12891/1011/2021 (Shri Bishwadip Paul Vs SSC) wherein it was observed by this Court that the vacancies advertised before 04.01.2021 are not governed by MoSJE Notification dated 04.01.2021, hence, no intervention is warranted.

5.8 The Notice of Examination of CGLE-2019 was published on 22.10.2019 i.e. before the issue of the Notification dated 04.01.2021 and hence, the Notification dated 04.01.2021 should not be made applicable to the Notice of CGLE-2019. SSC also submitted that the candidate, has also filed the case before the Hon'ble CAT, Ernakulam Bench, vide O.A. No.313/2022.

5.9 This Court is inclined to observe that the fault is not of the Respondent but of the establishments on behalf of which vacancies were issued by SSC. Before 04.01.2021, list which was prevalent was issued in 2013. In that list no post was identified suitable for Mental Disability category. In RPwD Act, 2016, provision was there to reserve vacancies for Mental Disability category, however till 04.01.2021 only few establishments identified posts suitable for mental disability category. Furthermore, it is also important to note that similar case is pending before Hon'ble Central Administrative Tribunal, Ernakulam. Since the issue is subjudice in another Court, this Court shall not intervene in the present Complaint.

5.10 Accordingly the case is disposed off.

Dated: 24.01.2023


(Upma Srivastava)
Chief Commissioner
for Persons with Disabilities