

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 7087/2016**

% **22<sup>nd</sup> November, 2016**

SH. MADANJIT KUMAR ..... Petitioner

Through: Mr. Rajan Kumar Chourasia,  
Advocate.

versus

UNION OF INDIA AND ANR. .... Respondents

Through: Mr. Ripu Daman Bhardwaj,  
Advocate for respondent No.1.  
Mr. Kunal Sharma, Advocate for  
respondent No.2.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not? **YES**

**VALMIKI J. MEHTA, J (ORAL)**

1. By this writ petition under Article 226 of the Constitution of India, the petitioner impugns the order dated 2.8.2016 of the respondent no.2/M/s Central Electronics Ltd/employer whereby the petitioner has been transferred from Sahibabad (NCR region) to Chandigarh. Petitioner also challenges the consequent relieving order dated 3.8.2016.

2. The case of the petitioner is that the petitioner has a daughter who has 100% profound mental retardation and also locomotor disability,

and hence the petitioner should not be transferred in view of the applicable circulars of the Government of India being the circulars dated 15.2.1991 and 6.6.2014. Two more circulars have been issued by the Government of India dated 17.11.2014 and 5.1.2016 whereby locomotor disability and mental retardation have been added to the disabilities which would be subject matter of the circulars dated 15.2.1991 and 6.6.2014.

3. On behalf of the respondent no.2/employer, it is argued by placing reliance upon the circulars of the Government of India dated 25.1.1991 and 8.4.1991 read with the decision of the Board of Directors of the respondent no.2 dated 21.11.2016 that the circulars of the Government of India dated 15.2.1991 and 6.6.2014 do not *ipso facto* apply to the respondent no.2 unless they have been adopted by the respondent no.2 because these circulars are in the nature of guidelines and not presidential directives. It is stated by the respondent no.2 that detailed reasons have been given by the Board of Directors of the respondent no.2 in its minutes of meeting dated 21.11.2016 for not adopting the circular dated 6.6.2014 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions of the Government of India.

4. Since the petitioner places reliance upon the circulars of Government of India dated 15.2.1991 and 6.6.2014, the same are reproduced as under:-

**“Circular dated 15.2.1991**

No.AB 14017/41/90-Estt. (RR)

Government of India

Ministry of Personnel, Public Grievances & Pensions

(Department of Personnel & Training)

New Delhi, 15<sup>th</sup> February, 1991

**OFFICE MEMORANDUM**

**Subject: Posting of Government employees who have mentally retarded children**

The undersigned is directed to say that there has been a demand that an employed parent of a mentally retarded child should be given posting at a place of his/her choice. This demand has been made on the plea that facilities of medical aid and education of such children are not available everywhere. Also looking after such children does require special care and patience and is expensive. Hence some concessions from the Government at least in matters of posting at a place of choice is called for.

2. The matter has been examined. Considering that the facilities for medical help and education of mentally retarded children may not be available at all stations, a choice in the place of posting is likely to be of some help to the parent in taking care of such a child. While administratively it may not be possible in all cases to ensure posting of such an employee at a place of his/her choice, Ministries/Departments are requested to take a sympathetic view on the merits of each case and accommodate such requests for posting to the extent possible.

Sd/-

(M.V. Kesavan)

DIRECTOR

To

All Ministries/Departments.

**Circular dated 6.6.2014**

No.42011/3/2014-Estt.(Res)

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

North Block, New Delhi

Dated the 6<sup>th</sup> June, 2014

**OFFICE MEMORANDUM**

Sub: Posting of Government employees who have differently abled dependents-reg.

There has been demand that a Government employee who is a care giver of the disabled child may not have to suffer due to displacement by means of routine transfer/rotational transfers. This demand has been made on the ground that a Government employee raises a kind of support system for his/her disabled child over a period of time in the locality where he/she resides which helps them in the rehabilitation.

2. The matter has been examined. Rehabilitation is a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, and psychiatric or a social functional level. The support system comprises of preferred linguistic zone, school/academic level, administration, neighbours, tutors/special educators, friends, medical care including hospitals, therapists and doctors, etc. Thus, rehabilitation is a continuous process and creation of such support system takes year together.

3. Considering that the Government employee who has disabled child serve as the main care giver of such child, any displacement of such Government employee will have a bearing on the systemic rehabilitation of the disabled child since the new environment/set up could prove to be a hindrance for the rehabilitation process of the child. Therefore, a Government servant who is also a care giver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word 'disabled' includes (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or Cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities.

4. Upbringing and rehabilitation of disabled child requires financial support. Making the Government employee to choose voluntary retirement on the pretext of routine transfer/rotation transfer would have adverse impact on the rehabilitation process of the disabled child.

5. This issues with the approval of MoS(PP).
6. All the Ministries/Departments etc. are requested to bring these instructions to the notice of all concerned under their control.

(Debabrata Das)

Under Secretary to the Govt. of India

Tel. No.23093307

To

- (i) All Ministries/Departments of the Government of India.
- (ii) Department of Financial Services, Ministry of Finance, New Delhi, in respect of Public Sector Banks/Public Sector Insurance Companies.
- (iii) Department of Public Enterprises, CGO Complex, New Delhi, in respect of Central Public Sector Enterprises.
- (iv) Railway Board/Union Public Service Commission/Supreme Court of India/Election Commission/Lok Sabha Secretariat/ Rajya Sabha Secretariat/ Cabinet Secretariat/Central Vigilance Commission/President's Secretariat/Prime Minister's Office/Planning Commission/C&AG.
- (v) Staff Selection Commission, CGO Complex, Lodhi Road, New Delhi.
- (vi) Office of the Chief Commissioner for Disabilities, Sarojini House, New Delhi.

Copy to: Tech. Director, NIC, DOPT for uploading on the website of this Department."

5. The relevant circulars of the Government of India, Ministry of Personnel, Public Grievances and Pensions relied upon by the respondent no.2 are dated 25.11.1991 and 8.4.1991, and which have to be read with the minutes of the meeting of the Board of Directors of the respondent no.2 dated 21.11.2016, and which are produced by the respondent no.2 today pursuant to the directions issued by the learned Single Judge of this Court dated 8.9.2016. These circulars and minutes of meeting read as under:-

**“Circular dated 25.11.991**

**13. Review of Guidelines**

The Committee of Secretaries have reviewed the “guidelines” issued from time to time by the Department of Public Enterprises based on the decisions of Government on various issues. The object of review is to ensure that the number of guidelines are reduced to the barest minimum so that the enterprises could function with the required autonomy and Government interface with the public sector enterprises would be only on very important policy issues. Separately an exercise is going on to indicate which of these guidelines should be treated as “mandatory” and other guidelines being treated only for “guidelines only”

2. Apart from the circulars issued by the DPE communicating the decision of the Government, administrative Ministries and Departments also issue directions and advice to the PSEs under their administrative control. Very often these affect the autonomy and operational freedom of the enterprises. The Committee of Secretaries in its meeting held on 26.12.90 have decided that all guidelines issued or proposed to be issued should invariably be issued through the DPE to ensure common policies and that they do not vitiate the “arm’s-length” relationship with public enterprises.

3. In view of the decision taken above all Ministries/Departments should, in future, forward whatever instruction/guidelines they wish to pass on the PSEs under their administrative control, to the DPE which will function as nodal point to clear such guidelines before issue in order to ensure common policies.

**(DPE O.M. No.6(6)/88(Coord) dated 25<sup>th</sup> January, 1991)**

**Circular dated 8<sup>th</sup> April, 1991**

**15. Review of Guidelines**

In continuation of this Department’s O.M. of even number dated 25.1.91 (copy enclosed) regarding Presidential Directives/Guidelines to be issued to the Public Sector Undertakings, the matter has been further considered with a view to clarify/consolidate the Government instructions on the subject. It has now been decided that whatever instructions the Government wish to give to the PSUs would broadly fall in the following two categories:

(i) Presidential Directives- These are issued by the administrative ministries to the concerned PSUs whenever the situation so warrants and are mandatory in nature. For the purpose of maintaining uniformity, such Directives shall be issued in consultation with the DPE if these relate to single PSU and with the concurrence of the DPE if these are applicable to more than one PSU. Further,

the DPE could also ask the administrative Ministries to issue Presidential Directives to one or more PSU on policy issues requiring a uniform approach.

(ii) Guidelines- These could be issued either by the administrative Ministry or the DPE as the case may be and will be advisory in nature. The Board of Directors of the PSUs will have the discretion not to adopt these guidelines for reasons to be recorded in writing. The Board Resolution on the subject giving the reasons therein should be forwarded both to the administrative Ministry concerned as well as to the DPE.

2. All Ministries/Departments are requested that the henceforth they should forward the Presidential Directive(s) proposed to be issued to PSUs in draft form to the DPE.

3. This issues with the approval of the Cabinet Secretary.

**(DPE O.M. No.6(6)/88 (Coord) dated 8<sup>th</sup> April, 1991)**

**Minutes of Meeting dated 21.11.2016**

**CENTRAL ELECTRONICS LIMITED**

**(CO ORDN & SECTT)**

No.C-1(b)/Secy/BM-194/2016

21.11.2016

**SUB: EXTRACT OF 194<sup>TH</sup> MINUTES OF BOARD OF DIRECTOR**

The extract of 194<sup>th</sup> Minutes of Board of Directors regarding “**DECISION REGARDIDNG ADOPTION OR OTHERWISE OF DOPT’S OM DATED 6<sup>TH</sup> JUNE 2014 CIRCULATED BY DPE VIDE OM NO. 6(9)/2014/SC/ST CELL dated 27<sup>TH</sup> JUNE 2014**” enclosed herewith for your necessary action.

Sd/-

S K Acharya

Company Secretary

ED/(HR)/AGM(HR)

**Central Electronics Limited**

**A PUBLIC SECTOR ENTERPRISE**

**4, Industrial Area, Shahibabad – 201010 (U.P.)**

**EXTRACT OF MINUTES OF 194<sup>TH</sup> MINUTES OF BOARD OF DIRECTOR OF CENTRAL ELECTRONICS LIMITED HELD ON**

**THURSDAY THE 29<sup>TH</sup> SEPTEMBER, 2016 AT 16:00 HRS. IN THE BOARD ROOM OF CENTRAL ELECTRONICS LIMITED, FACTORY PREMISES, 4 INDUSTRIAL AREA, SAHIBABAD-201010 (UP)**

**ITEM NO. 194.11**

**DECISION REGARDING ADOPTION OR OTHERWISE OF DOPT'S OM DATED 6<sup>TH</sup> JUNE 2014 CIRCULATED BY DPE VIDE OM NO. 6(9)/2014/(SC/ST CELL dated 27<sup>TH</sup> JUNE 2014**

The Board noted that, the guidelines given in the OM were progressive and in line with the Company's own philosophy to be a model employer. However, the company itself is in a very critical position at the moment with huge accumulated losses and has not even been able to pay salary arrears of 1997 pay revision yet. The company is also being considered for disinvestment by the Government. In this situation, when its very survival is at stake, the Company has adopted an aggressive growth policy with ambitious targets for exponential growth, to fully utilize the opportunities available in the market. The policy has started showing results and the Company has started to re-establish itself on a much expanded base and is looking to expand its presence across the country. As such, this is a crucial juncture for the Company which requires to have all hands on the deck and fully utilize all resources for meeting its growth plan/targets. At this juncture, when the Company is looking for expanding its presence across the country, it needs to post employees to various offices as per functional requirements of each office. In view of the present situation of the Company, the Board decided and approved that, it is not possible for the Company to adopt the guidelines given in the DOPT OM dated 6<sup>th</sup> June 2014 & circulated by DPE Vide OM No. 6(9)/2014/(SC/ST CELL dated 27<sup>th</sup> June 2014.

However, in future, when the company has adequately large manpower and the new offices are fully stabilized, the decision may be reviewed by the management.

At the same time, the Board desired that the Company should make all efforts to ensure that such employees are preferably posted at locations having good connectivity to major metro towns/Delhi and not lacking in medical facilities.

Certified True Copy  
For Central Electronics Limited

-sd-  
(S.K. Acharya)  
Company Secretary  
21.11.2016"  
(underlining added)

6. The issue is that whether the respondent no.2/employer is governed and bound by the circulars of the Government of India dated 15.2.1991 and 6.6.2014. On behalf of the petitioner, strong emphasis is placed upon the fact that a copy of the circular dated 6.6.2014 has been marked to the Department of Public Enterprises in respect of Central Public Sector Enterprises, -respondent no.2 being a public sector enterprise. It is further argued on behalf of the petitioner that the circulars issued by the Department of Personnel and Training of the Ministry of Personnel, Public Grievances and Pensions automatically bind the respondent no.2.

7. Learned counsel for the petitioner very strenuously argued that the child of the petitioner suffers from great disability and therefore there will be grave hardship upon the petitioner in case the petitioner is transferred from Delhi to Chandigarh. In response, counsel for the respondent no.2 has argued that by the order of transfer not only the petitioner has been transferred but two other officers, namely Sh. Rajiv Aggarwal and Sh. Sanjay Kumar Jain have also been transferred and which two officers have been transferred to faraway places at Bangalore and Bhubaneswar, but the petitioner in view of the condition of his daughter has been transferred to a nearby station of Chandigarh, and Chandigarh being a cosmopolitan city where all the medical facilities would be available.

8. In my opinion, the argument of the petitioner that respondent no.2 is automatically bound by the circulars dated 15.2.1991 and 6.6.2014 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, is a misconceived argument inasmuch as the parent ministry or the Administrative Ministry of the respondent no.2 is the Ministry of Science and Technology and not the Ministry of Personnel, Public Grievances and Pensions. The circular dated 25.1.1991, reproduced above, shows that a separate exercise was going on to decide which of the circulars of the Ministry of Personnel would be mandatory and which of the circulars of the Ministry of Personnel would only be guidelines i.e only directory. This aspect then is further clarified in the subsequent circular dated 8.4.1991 of the Ministry of Personnel clarifying that only the presidential directives are mandatory and not the guidelines. This aspect is to be taken with the fact that the presidential directives which are mandatory have to be issued by the Administrative Ministry of the concerned public enterprise and not by the DPE viz the Ministry of Personnel. In my opinion, therefore, the circulars of the Government of India, Ministry of Personnel dated 15.2.1991 and 6.6.2014 do not at all automatically mandatorily become binding upon the respondent no.2 unless the said circulars were in the nature of presidential directives issued by the Administrative Ministry of the respondent no.2 and admittedly these circulars are not issued by the

Administrative Ministry of the respondent no.2. The fact that the O.M. dated 6.6.2014 is marked to Public Sector Enterprises is only to enable a Public Sector Enterprise to decide whether or not the Public Sector Enterprise wishes to adopt or not the guidelines and marking to Public Sector Enterprises is not to make the O.M. mandatorily binding on Public Sector Enterprises. Also I do not agree with the argument urged on behalf of the petitioner relying upon para 2 of the circular dated 25.1.1991 that all circulars have to be issued by the DPE and not by the Administrative Ministry inasmuch as the last two lines of the first para of this circular dated 25.1.1991 clarifies that separately it was being decided as to which of the guidelines should be taken as mandatory and which others be treated as only guidelines, and which aspect is then clarified in the circular dated 8.4.1991 that only presidential directives are mandatory and which presidential directives are to be issued by the Administrative Ministry of the concerned Public Sector Enterprises. This is also so held by the Supreme Court in its judgment in the case of *Sureshchandra Singh and Others Vs. Fertilizer Corpn. Of India Ltd. and Others (2004) 1 SCC 592* as per para 4 of this judgment and which para 4 reads as under:-

“4. By OMs dated 25-1-1991 and 8-4-1991, the Ministry of Programme Implementation and Department of Public Enterprises made it clear that all instructions/guidelines issued by the Government of India would be of two kinds: (a) directives issued in the name of President of India, and (b) guidelines. Directives would be issued by the Administrative Ministry in the

name of the President while all other instructions issued by the Department of Public Enterprises or by the Administrative Ministry are only advisory which the Board of Directors of the public sector undertakings concerned may in their discretion adopt or not for reasons to be recorded in writing.”

9. In view of the above said discussion, it is held that the circulars of the Ministry of Personnel dated 15.2.1991 and 6.6.2014 automatically do not become mandatorily binding upon the respondent no.2. Also in this regard, it is to be noted that the Board of Directors of the respondent no.2 in the minutes of meeting dated 21.11.2016 has given various reasons for not adopting the DOPT's O.M. dated 6.6.2014 by observing that so far as respondent no.2 is concerned, it was not in a good financial condition and has accumulated huge losses whereby aggressive action has to be taken by the respondent no.2 for its recovery including expanding its business. It is noted that the petitioner has been transferred to Chandigarh to expand the business by setting up a fresh office at Chandigarh because the petitioner is holding a post of Senior Manager (Marketing) with the respondent no.2. In my opinion, therefore, respondent no.2 vide the minutes of meeting of Board of Directors dated 21.11.2016 has given valid reasons for not adopting the circular dated 6.6.2014 and therefore the petitioner cannot take any benefit of the circulars dated 15.2.1991 and 6.6.2014 as if the same were binding upon the respondent no.2 for not transferring the petitioner.

10. I also note that there is really no issue of grave miscarriage of justice or grave prejudice to the petitioner because the issue with respect to petitioner's daughter being shifted from Delhi to Chandigarh is only a onetime action. It is not as if that the petitioner will have to repeatedly change the station of his daughter because petitioner is married and (he has a wife as per the answer to Court query) the wife of the petitioner is a housewife who takes care of the child of the petitioner. Therefore, shifting from Delhi to Chandigarh of the petitioner and his family including his child who is mentally retarded and having locomotor disability, cannot be such a ground for quashing of the impugned order transferring the petitioner as the shifting of the petitioner's child, as stated above, will only be a onetime action with the fact that Chandigarh is the capital of Punjab and Haryana, and which has sufficient medical facilities.

11. In view of the above, I do not find any merits in this writ petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

**NOVEMBER 22, 2016**  
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**VALMIKI J. MEHTA, J**