

WPA 26772 of 2022

Mithilesh Kumar Bharati
Vs.
The Union of India & Ors.

Ms. Sangeeta Roy
Mr. Sandeep Prasad Shaw
Mr. Chandra Prakash
Ms. Monalisa Maity
Ms. Munmun Dalapati

....for the petitioner

Mr. Devajyoti Barman
Mr. Sudhir Kumar Senapati
Ms. Sanjukta Basu Mallick

....for the respondent Nos. 2 to 7

Mr. Aninda Bhattacharya

....for the Union of India

The grievance of the petitioner is that he has been transferred from Durgapur region to Coimbatore without assessment of his medical illness. The prayer of the petitioner for assessment of his medical health has not been considered by the authorities concerned.

The petitioner is working as an Assistant Manager with the Central Bank of India. The petitioner due to his '*mental illness*' prayed for cancellation and/or recalling of the order of transfer dated April 27, 2022. The said order of transfer was not recalled. The petitioner made a representation again on November 28, 2022. The said representation has not been considered till date.

By an order dated November 15, 2022 the Deputy General manager, HRD transferred three employees. By an order dated November 16, 2022 the Deputy General Manager transferred 13 employees to their preferred place of posting.

From the Report-on-Affidavit it appears that all the 16 employees who were transferred to their preferred place of posting were either caregivers or suffering from critical illness or were persons with disabilities under the Rights of Persons with Disabilities Act, 2016. Therefore, it is argued on behalf of the Bank that there was no infirmity in transferring 16 employees to their preferred place of posting.

Furthermore, it is submitted on behalf of the Bank that the petitioner appeared **fit** and **fine** during a personal hearing given to the petitioner pursuant to his representation on November 5, 2022. Since in the personal hearing the petitioner appeared to be **fit**, there was no requirement for constitution of medical board for the purpose of assessing the disability of the petitioner under 2016 Act.

It is argued that the petitioner is willing to join the Bank at Durgapur Branch and not at Coimbatore because of the convenience of the petitioner and not due to his '*mental illness*'.

It is submitted on behalf of the petitioner relying on the exception to the Report that the Bank has not constituted a medical board that it was required to do under its own guidelines for assessing the *disability* of the petitioner. The guidelines dated June 28, 2022 issued by the General Manager – HRD is relied in this regard.

Considering the rival submissions of the parties and the materials placed on record, this Court finds that there are certain documents annexed to the writ petition to show psychiatric illness/mental illness of the petitioner. Under the guidelines of the Bank, the Bank is required to constitute a medical board comprising at least three members out of which at least one is specialist in the particular field of assessing *disability* for updation of the service records of the employees having *disabilities*.

Since certain medical documents have been produced it could not have been possible during the personal hearing given to the petitioner on November 5, 2022 by a lay person to assess the ‘*mental illness*’ of the petitioner in terms of the schedule of the 2016 Act.

Therefore, this Court directs a medical board to be constituted comprising of at least three persons out of which one is specialist in a particular field for

assessing *disability* of the petitioner. Such exercise shall be completed within three months from date at the place where the petitioner is currently posted. In the event, the petitioner is found to be suffering from ‘*mental illness*’ under the 2016 Act then his representation for transfer shall be considered sympathetically by the authorities concerned within a period of two months from the date of the report of the medical board of the Bank, upon giving a personal hearing to the petitioner. Such representation shall be disposed of with the reasoned order and communicated to the petitioner within two weeks of passing thereof.

With the directions aforesaid, **WPA 26772 of 2022** is **disposed of**.

All parties are to act on a server copy of this order downloaded from the official website of this Hon’ble Court.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(Lapita Banerji, J)