



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

Date of decision: 03rd NOVEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 4163/2023 & CM APPL. 16133/2023**

CENTRAL BANK OF INDIA

..... Petitioner

Through: Mr. Pavan Kumar, Mr. Nayeem
Hasan Raza & Ms. Neelam,
Advocates.

versus

SMT SHAKUNTALA DEVI & ANR.

..... Respondents

Through: Mr. Sanjeev Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner/Central Bank of India has approached this Court under Article 226 of the Constitution of India challenging an Order dated 28.12.2022 passed by the Chief Commissioner for Persons with Disabilities (Divyangjan), New Delhi in Case No. 13454/1022/2022 and for a direction to Respondent No.2 herein to forthwith join his transferred posting at the Central Bank of India at Regional Office (RO) Gorakhpur, Lucknow Zone, U.P.
2. The facts in brief leading to the instant writ petition are as follows:-
 - i. It is stated that Respondent No.2 joined the Petitioner/Bank as a Clerk in Sukhdev Vihar Branch, New Delhi in January, 1995.
 - ii. Material on record discloses that Respondent No.2 was transferred



to various branches in Delhi on 22.02.2010 and 22.05.2007. It is stated that on 06.10.2008, Respondent No.2 was transferred to Jaipur, Rajasthan on promotion as Assistant Manager. It is stated that Respondent No.2 was transferred back to Delhi on 07.12.2012.

- iii. After being transferred to Delhi, Respondent No.2 was again transferred within Delhi on 02.05.2016, 18.06.2021 and 20.07.2021.
- iv. Material on record discloses that since 1995 i.e., for a period of 24 years, Respondent No.2 has been in Delhi throughout barring the period from 06.10.2008 to 7.12.2008 i.e. for a period of two months, when Respondent No.2 was posted in Jaipur, Rajasthan.
- v. On 21.04.2022, Respondent No.2 was transferred to Lucknow Zone. It is stated that Respondent No.2 sent representations to the Petitioner/Bank on 22.04.2022, 01.06.2022, 24.06.2022, 29.06.2022 and 10.08.2022 to cancel his transfer.
- vi. It is stated that Respondent No.1 herein, i.e., mother of Respondent No.2 herein, who has 47% Locomotor Disability, approached the Chief Commissioner for Persons with Disabilities appointed under the Rights of Persons with Disabilities Act, 2016 complaining that Respondent No.2 is the sole care giver and that transfer of Respondent No.2 from Delhi ought to be cancelled.
- vii. The Chief Commissioner for Persons with Disabilities under the Rights of Persons with Disabilities Act, 2016 by the Order impugned herein has observed that the transfer of Respondent



No.2 must be cancelled and the Petitioner herein has also been directed to file a compliance report within a period of three months failing which the Chief Commissioner for Persons with Disabilities shall presume that the Petitioner has not implemented its recommendation and that the matter shall be reported to the Parliament.

- viii. The Chief Commissioner for Persons with Disabilities has placed reliance on the Office Memorandum (OM) dated 08.10.2018 passed by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training. Under the said OM, a government employee, who is a care giver of dependent daughter/son/parents/spouse/brother/sister with specified disability as certified by a certifying authority a person with benchmark disability under Section 2(r) of the Rights of Persons with Disability Act, 2016 may be exempted from routine exercise of transfer/rotational transfer subject to administrative constraints.
- ix. The Chief Commissioner for Persons with Disabilities has held that the intention of the guidelines is to provide a conducive environment to the government employee who is serving as the main care giver of the disabled dependent and, therefore, the authority concerned must comply with the said OM.
- x. The Chief Commissioner for Persons with Disabilities rejected the contention of the Bank that the wife of Respondent No.2 can provide adequate care to the mother of Respondent No.2 and that



Respondent No.2 is not the sole care giver. The Chief Commissioner also rejected the contention of the Bank that the disability certificate has been obtained by Respondent No.2 post the transfer order was passed by the Petitioner/Bank.

- xi. It is this order of the Chief Commissioner for Persons with Disabilities which has been challenged by the Petitioner/Bank in the instant writ petition.
3. Notice was issued on 05.04.2023. Pleadings are complete.
4. Learned Counsel for the Petitioner contends that the Chief Commissioner for Persons with Disabilities while exercising its jurisdiction under Section 75 of the Rights of Persons with Disabilities Act, 2016 cannot interfere with transfer orders. He states that transfers are exigencies of service and courts do not interfere with transfer orders unless the transfer orders are malafide. He places reliance on a Judgment dated 12.06.2023 passed by the learned Single Judge of the Madhya Pradesh High Court in Central Bank of India v. Chief Commissioner for Persons with Disability (Divyangjan) & Anr., W.P.(C) 7062/2023, wherein in identical circumstances, the learned Single Judge came to the conclusion that the Chief Commissioner for Persons with Disabilities does not have power to pass directions interfering with transfer orders.
5. Learned Counsel for the Petitioner also places reliance on the Judgment dated 07.03.2022 passed by a Division Bench of this Court in Amarjeet Singh Dagar v. Union of India & Ors., 2022 SCC OnLine Del 694, wherein this Court has refused to interfere in matter of routine transfer of a person who claimed rights under the Rights of Persons with Disabilities



Act contending that courts do not interfere with the routine transfers.

6. Learned Counsel for the Petitioner further states that Respondent No.2 has been posted in Delhi for 24 years save and two months, when Respondent No.2 was posted in Jaipur, Rajasthan. He states that as per the CVC guidelines, Respondent No.2 ought to be transferred outside Delhi. He states that since there is jurisdictional error on the part of the Chief Commissioner for Persons with Disabilities, the said order cannot be sustained.

7. *Per contra*, learned Counsel for the Respondents draws the attention of this Court to a Judgment dated 29.03.2019 passed by a Coordinate Bench of this Court in Bank of Baroda v Susmita Shah, **W.P.(C) 2143/2018**, wherein the Coordinate Bench of this Court held that the Chief Commissioner under the Rights of Persons with Disabilities Act functions as a quasi-judicial authority and has ample powers to decide the issue and the orders passed by the Chief Commissioner for Persons with Disabilities must be given serious and due consideration and weightage. Learned Counsel for the Respondents states that the Chief Commissioner for Persons with Disabilities has been empowered to look into any transgression on the Rights of Persons with Disabilities Act as also to examine the issues of non-implementation of the laws which are for the welfare and for protection of rights of persons with disabilities.

8. Heard learned Counsel for the parties and perused the material on record.

9. Section 75 of the Rights of Persons with Disabilities Act, 2016, lays down the functions of the Chief Commissioner for Persons with Disabilities.



Section 75 of the Rights of Persons with Disabilities Act reads as under:-

“75. Functions of Chief Commissioner. —

(1) The Chief Commissioner shall—

(a) identify, suo motu or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with this Act and recommend necessary corrective steps;

(b) inquire, suo motu or otherwise, deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;

(d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;

(e) study treaties and other international instruments on the rights of persons with disabilities and make recommendations for their effective implementation;

(f) undertake and promote research in the field of the rights of persons with disabilities;

(g) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;



(h) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;

(i) monitor utilisation of funds disbursed by the Central Government for the benefit of persons with disabilities; and

(j) perform such other functions as the Central Government may assign.

(2) The Chief Commissioner shall consult the Commissioners on any matter while discharging its functions under this Act.”

10. The learned Single Judge of the Madhya Pradesh High Court in Central Bank of India (supra), after quoting the said Section 75 of the Rights of Persons with Disabilities Act, 2016, and after placing reliance on the judgments of the Apex Court in State Bank of Patiala & Ors. v. Vinesh Kumar Bhasin, **2010 (4) SCC 368** and Bharat Sanchar Nigam Limited v. G Sarvothaman, **2013 (10) SCC 489** has held that the Chief Commissioner had exceeded in his jurisdiction in passing directions restraining the Bank from transferring an employee of the Bank on the ground that he is the only care giver for his mother.

11. At this juncture, it is pertinent to mention that the judgment of the Apex Court in State Bank of Patiala & Ors. v. Vinesh Kumar Bhasin, **2010 (4) SCC 368**, was dealing with the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In the said judgment, the Apex Court was dealing with the question of retirement



of an employee of the State Bank of Patiala. The Respondent therein had joined the services of the Bank on 18.11.1976 and was due to retire on 17.11.2006 and made application on 14.11.2006 for relieving him under the 'Exist Option Scheme', which had been brought out by the Bank with the objective of bringing down the staff strength by providing exit route to eligible officers who may be demotivated due to lack of career prospects. The employee who had opted for the Scheme three days before the completion of his formal retirement was not permitted on the ground that accepting a request few days before the retirement does not arise because an employee feeling demotivated at that stage because of lack of prospects. Contending that the action of the Bank amounts to depriving a person of his rights under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Petitioner therein approached the Chief Commissioner under the said Act. The Chief Commissioner for Persons with Disabilities passed an interim order restraining the Bank from retiring Petitioner therein from the services. In that context, the Apex Court held that the Chief Commissioner for Persons with Disabilities does not have any power to pass interim orders. The judgment of the Apex Court was not applicable on the facts of the case.

12. In Bharat Sanchar Nigam Limited v. G Sarvothaman, **2013 (10) SCC 489**, the Apex Court was dealing with the order of the Chief Commissioner directing permission of physically handicapped person when there was no quota for reservation for physically handicapped persons in the promotional posts and in that context, the Apex Court held that the Chief Commissioner has power only to examine matter related to deprivation of right. Since there



was no right for the disabled persons, the Apex Court held that order is also not applicable to the facts in that case.

13. In view of the fact that both judgments of the Apex Court are not applicable to the facts of the present case, the question that arises for consideration is that whether the Office Memorandum (OM) dated 08.10.2018 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training is applicable to the Petitioner or not.

14. At this juncture it is necessary to extract the relevant portion of the OM dated 08.10.2018, issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, which reads as under:-

*“F.No.42011/3/2014-Estt. (Res)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training*

*North Block, New Delhi
Dated the 08th October, 2018*

OFFICE MEMORANDUM

Subject: Exemption from the routine exercise of transfer/rotational transfer.

Considering that transfer of a Government employee who serves as the main care giver of persons with disability would have a bearing on the systematic rehabilitation of persons with disabilities, the Government issued OM of even number dated June 6, 2014 to exempt such employee from routine exercise of transfer/rotational transfer, subject to



administrative constraints.

2. The scope of disability initially had covered (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, which subsequently, vide OMs of even number dated November 17, 2014 and January 5, 2016, was further extended to include 'Autism', 'Thalassemia' and 'Haemophilia'.

3. With the enactment of the Rights of Persons with Disabilities Act, 2016 on April 17, 2017, the following instructions are issued in supersession of the above-mentioned OMs of even number dated June 6, 2014, November 17, 2014 and January 5, 2016 with regard to the eligibility for seeking exemption from routine exercise of transfer/rotational transfer:

(i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

(ii) The term "Specified Disability" as defined in the Schedule to the Rights of Persons with Disabilities Act, 2016, covers (i) Locomotor disability including leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy and Acid attack victims (ii) Blindness (iii) Low-vision (iv) Deaf (v) Hard of hearing (vi) Speech and language disabilities (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability



caused due to (a) Neurological conditions such as Multiple sclerosis and Parkinson's disease (b) Blood disorder- Haemophilia, Thalassemia and Sickle cell disease and (x) Multiple disabilities (more than one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government.

(iii) The term 'Specified Disability' as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer/ rotational transfer by a Government employee, who is a care-giver of dependent daughter/son/parents/spouse/brother/sister as stated in Para 3(i) above."

(emphasis supplied)

15. It is pertinent to mention that the OM dated 29.03.2023 which has been brought out by the Ministry of Finance, Government of India which has been circulated to all the Public Sector Banks regarding the implementation of OM dated 08.10.2018 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training. The relevant portion of OM dated 29.03.2023 reads as under:-

"Subject: Exemption from routine/rotational transfer to the Government employees who are care-giver of Person with Benchmark Disabilities

Madam/Sir,

I am directed to refer to this Department's letter No.3/4/2017-Welfare dated 31.01.2019, forwarding therewith DoP&T's guidelines issued vide their O.M. No.42011/3/2014-Estt. (Res) dated 08.10.2018, on the above mentioned subject.

2. In these guidelines, it has been instructed that the



Government employee who is a caregiver of dependent daughter/son/parents/spouse/ brother/ sister with specified disability, as certified by the certifying authority as a Person with Benchmark Disability, as defined in Section 2(R) of the RPwD Act, 2016 may be exempted from routine exercise of transfer/rotational transfer subject to the administrative constraints. These guidelines also contain the 'specified Disabilities as defined the in Schedule to the RPwD Act, 2016, and these include intellectual disability including specific learning disabilities and autism spectrum disorder etc.

3. However, it has been brought to notice that despite these guidelines and various orders passed by Court of Chief Commissioner for Persons with Disabilities (Divyangjan) [CCPD], many Public Sector Banks (PSBs) are not complying the aforementioned guidelines issued by DoP&T's in their respective organization which is causing hardship to the working parents as well as their dependents.

4. In this connection, it is highlighted that as per statutory provisions, the general superintendence, direction and management of PSBs/ PSICs/ PFIs etc. vests with the Board of Directors. These organisations function as autonomous entities within the broad framework of guidelines issued by the Government from time to time. Accordingly, it is once again requested that the guidelines issued by DoP&T vide O.M. No. 42011/3/2014-Estt. (Res) dated 08.10.2018, and circulated to all the PSBs/ PSICs/ PFIs vide this Department's letter of even number dated 31.01.2019 may please be implemented scrupulously to avoid any hardship to such category of employees and to avoid further litigation in the matter. A copy of DoP&T guidelines dated 08.10.2018 is enclosed once again for



information and compliance. ”

(emphasis supplied)

16. A perusal of the aforesaid two OMs shows that a government employee who is a care giver of the dependent daughter, son, parent, spouse, sister, brother with specified disability as certified by the certifying authority as person with benchmark disability under Section 2(r) of the Rights of Persons with Disabilities Act may be exempted from routine transfer subject to administrative constraints.

17. Undoubtedly, transfer is an exigency of service and courts loathe interfering with the transfer exercise. The circulars also do not indicate that under no circumstance a care giver can be transferred. A care giver can be transferred in case of administrative constraints. Section 76 of the Rights of Persons with Disabilities Act provides that the orders of the Chief Commissioner are only recommendatory in nature and it is for the authority to accept or reject a recommendation.

18. This Court is of the opinion that the OMs in question are applicable to the facts of the present case. However, it is for the Petitioner/Bank to decide as to whether to accept or not to accept the recommendation of the Chief Commissioner for Persons with Disabilities. By the impugned order, the Chief Commissioner for Persons with Disabilities has virtually directed the Petitioner/Bank to cancel the transfer order. The relevant portion of the Order dated 28.12.2022 passed by the Chief Commissioner for Persons with Disabilities reads as under:-

“42. This Court recommends that the Respondent shall cancel the transfer of the employee namely Sri Devender Kumar from Delhi to Gorakhpur. However,



the Respondent is at liberty to transfer the employee to any branch situated in Delhi/NCR so that relevant CVC guidelines can be implemented and the employee does not need to change his station and can take care of his mother.

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.”

19. Even though it is stated that the Chief Commissioner for Persons with Disabilities is recommending the Petitioner/Bank to cancel the transfer order but it also states that a compliance report has to be given in three months failing which the action of the Petitioner/Bank would be reported to the Parliament. The Commission cannot pass such orders and the Chief Commissioner for Persons with Disabilities has exceeded its jurisdiction in passing orders restraining transfer, and the Bank can, in case of administrative exigencies give reasons to the Chief Commissioner as to why the recommendation cannot be accepted. The impugned order, is, therefore, modified to the extent that it is for the Petitioner/Bank to consider as to whether the transfer of Respondent No.2 herein is a routine transfer or the transfer is in accordance with the other guidelines issued by the government or whether there are any administrative exigencies because of which Respondent No.2 is being transferred.

20. In case the Bank feels that the recommendation of the Chief Commissioner for Persons with Disabilities cannot be accepted, the



Petitioner/Bank shall give reasons as to why the recommendation is not being accepted, which would be also informed to Respondent No.2.

21. It is made clear that the Chief Commissioner for Persons with Disabilities does not have any jurisdiction to sit as an appellate authority if the Petitioner/Bank refuses to accept the recommendation of the Chief Commissioner for Persons with Disabilities. It is, however, expected that the Petitioner/Bank will act in accordance with law in considering the recommendation of the Chief Commissioner for Persons with Disabilities and pass orders. The Petitioner/Bank is directed to pass orders on the recommendation of the Chief Commissioner for Persons with Disabilities within a period of four weeks from today.

22. The transfer order shall be kept in abeyance till the recommendation of the Chief Commissioner for Persons with Disabilities is not considered and decided.

23. The writ petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 03, 2023

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