



\$~85

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

Date of Decision: 2nd September, 2024.

+ W.P.(C) 11104/2024 & CM APPL. 45890/2024

NATIONAL POWER TRAINING INSTITUTEPetitioner

Through: Mr. Prashant Shukla, Mr. Anushree Shukla, Mr. Prabhat Chowdhary, Mr. Kartik Kumar, Advocates with Petitioner in person.

versus

OFFICE OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITY & ORS.Respondents

Through: Mr. Vivek Sharma, SPC with Mr. Manoj Kr. Tyagi, Mr. Kapil Dev Yadav, Mr. Shekhar Tyagi, Advocates for R-1 & R-2. Mr. Tanveer Oberoi, Advocate for R-3 along with Respondent No.3 in person.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Through the present writ petition, the Petitioner – National Power Training Institute¹ impugns order dated 2nd August, 2024 passed by the Court of Chief Commissioner for Persons with Disabilities² (Divyangjan), in Case No. CCPD/15589/1022/24 titled as “*Sh. Mukesh Kumar vs. Director*”

¹ “NPTI”

² “CCPD”



General, NPTI". By this interim order, the transfer of Respondent No. 3 has been stayed pending the outcome of the proceedings in the aforementioned complaint.

2. Mr. Prashant Shukla, counsel for the Petitioner presents the following factual background which led to the filing of the present writ petition:

2.1 Respondent No. 3, a person with disabilities, was appointed as an Assistant Director (Tech./Faculty) at the Petitioner's Institute in 2007.

2.2 On 27th July, 2009, an office order was issued transferring Respondent No. 3 from NPTI (Central Office) Faridabad to NPTI (Northern Region) Badarpur, New Delhi. However, following a representation made by Respondent No. 3 to the Director General of NPTI Head Office, Faridabad, this transfer was subsequently cancelled by an office order dated 3rd May, 2010.

2.3 From 2014 onwards, Respondent No. 3 allegedly began using his political connections to demand a promotion from the Petitioner. In response, the Petitioner issued a Memorandum dated 6th July, 2015, under Rule 16 of the Central Civil Services (Classification, Control, and Appeal) Rules, 1965, charging Respondent No. 3 with bypassing the appropriate authority to address his grievance and instead directly approaching higher authorities. However, these charges were later withdrawn by the Petitioner through an office order dated 10th April, 2017.

2.4 On 24th September, 2018, Respondent No. 3 filed a complaint with the Chief Commissioner for Persons with Disabilities, seeking promotion to the post of Deputy Director. This complaint was disposed of by an order dated 22nd November, 2019, directing the Petitioner to take appropriate action in accordance with the provisions of the Rights of Person with Disabilities Act,



2016³.

2.5 Respondent No. 3 was then promoted to the post of Deputy Director on 27th December, 2019 and transferred to NPTI Shivpuri, M.P. However, on 16th March, 2020, Respondent No. 3 again approached higher authorities through political persons, raising grievances against such a transfer.

2.6 The Petitioner issued another Memorandum dated 24th April, 2020, against Respondent No. 3 under Rule 20 of the Central Civil Services (Conduct) Rules, 1964, for misconduct of using political influence to seek a transfer from NPTI Shivpuri to NPTI Faridabad. Despite this, Respondent No. 3 was transferred back from NPTI Shivpuri to NPTI (CO) Faridabad by an office order dated 2nd September, 2020.

2.7 On 19th June, 2024, Respondent No. 3 was again ordered to be transferred from NPTI Faridabad to NPTI (ER), Durgapur, in public interest since his skills and expertise would be needed at the NPTI Durgapur site. A relieving letter was issued by the Petitioner on 2nd July, 2024, followed by a memorandum dated 9th July, 2024, instructing Respondent No. 3 to join his duties at NPTI (ER), Durgapur immediately.

2.8 On 15th July, 2024, Respondent No. 3 sent an email to the Petitioner, citing his illness and a doctor's recommendation for bed rest, but assured them that he would report to NPTI (ER), Durgapur once he had recovered. However, on 21st /22nd July, 2024, Respondent No. 3 filed a complaint with the CCPD against the Petitioner, alleging that the frequent transfers reflected *malafide* intent and amounted to harassment of a person with disabilities. On the same day, the CCPD issued a notice under Sections 75 and 77 of the RPWD Act to the Director General, NPTI, based on Respondent No. 3's

³ "RPWD Act"



complaint.

2.9 Notably, even amidst these proceedings, Respondent No. 3 continued to express his willingness to comply, as evidenced by an email dated 22nd July, 2024, in which he reiterated his intention to join the new posting at Durgapur once his health condition allowed.

2.10 On 23rd July, 2024, the Petitioner issued another Memorandum urging Respondent No. 3, to immediately resume his duties at NPTI (ER), Durgapur.

2.11 On 26th July, 2024, the CCPD issued a subsequent notice summoning the Petitioner to appear on 30th July, 2024. Meanwhile, Respondent No. 3, in an email dated 29th July, 2024, again assured the Petitioner of his intention to join NPTI (ER), Durgapur, contingent upon medical clearance.

2.12 Concurrently, Respondent No. 3 pursued his complaint before the CCPD, who, after hearing the parties on 30th July, 2024, reserved the matter for a later date in August. However, two days later, the CCPD issued an interim order, which provided as follows:

“10. After hearing both parties, the Chief Commissioner observed that on the face of it, this is a classic case of harassment of an employee with disability. The Complainant has made very serious allegations about the HR policies of the respondent establishment, which, at the very least reeks of an Ableist and anti divyang mindset of the management. Transfer of one Divyang officer while not moving his non-disabled colleagues, is in complete violation of section 3, section 20, section 21 of the RPwD Act, 20 16 read with rule 8 (3) (c) of the RPwD Rules and instructions issued from the DoPT and the DPE in this regard from time to time.

11. The Hon’ble Delhi High Court in a recent judgment passed on 18.07.2024 in LPA. 133/2024 and C.M. No. 9793/2024 in the matter of ircon International. Ltd. Vs Bhavneet Singh has discussed the issue in great detail. The Hon’ble Court dismissed an appeal filed by the Corporation against the judgment of the learned Single Judge who had set aside the transfer order and the relieving order of the respondent in that case, Shri Bhavneet Singh, who is a differently-abled person. Notably, as per the submissions of the Corporation, a written complaint of assault against



the abovementioned employee became the underpinning reason for the impugned transfer order. The Hon'ble High Court while acknowledging that there is no inherent right of any employee to be posted to a place of his choice, it held that persons with disabilities should be exempted from routine transfers and be posted near their native place or to place of their choice, subject to the exigencies of service. The Appellant, (IRCON) has not discharged the burden of proof to show any administrative exigency. Further, as in this case, the employee in the case before the Hon'ble High Court also averred that several people had remained in one location for five (5) years or more. The Hon'ble High Court relied on the fact that this averment of the employee remained unrebutted.

12. In view of the above, this Court directed the Respondent to keep the impugned transfer order in abeyance till the matter is pending in this Court and submit the following information/documents within 10 days: -

(i) A list of all employees working in Faridabad and Badarpur showing their complete employment chart including their assignments.

(ii) A list showing the recruitments made during the last 03 years, including contractual recruitments giving details of the dates of recruitment, posting of the persons so recruited, their qualification, and also a statement whether any of such recruits have any relative or family member who is also working in the same establishment

(iii) A list containing the information regarding (a) no. of posts filled with persons with disabilities; (b) no of persons with disabilities applied, (c) nature and %age of their disability.

13. The Court also recommended to the Respondent to take corrective measures, if any, to ensure that employees with disabilities are not harassed and furnish a Compliance Report within 05 days. The Court also directed that the DG of the Respondent establishment shall be present (online/offline) during the next hearing."

3. By virtue of the aforementioned order, the transfer of Respondent No. 3 to NPTI Durgapur has now been stayed. The Petitioner's grievance is that despite Respondent No. 3's assurances that he would join NPTI Durgapur upon recovery from his illness, he simultaneously sought intervention from the CCPD to challenge his transfer. The Petitioner argues that this act of invoking the CCPD's executive authority to adjudicate his transfer grievance exceeds the mandate of the said authority. Furthermore, it is contended that



the CCPD has acted beyond its jurisdiction by passing the impugned decision, as it is not a Tribunal or adjudicatory forum empowered to resolve such employment-related disputes between an employee and their employer.

4. The Petitioner contends that the transfer of Respondent No. 3 is necessary to fulfil the obligations under a Memorandum of Understanding (MoU) executed with the Damodar Valley Corporation, which mandates the supervision and execution of specific activities at the NPTI, Durgapur site. The Petitioner argues that Respondent No. 3 is uniquely qualified for this role due to his specialized skills and expertise, making him the most suitable candidate for overseeing the activities at NPTI, Durgapur. It is further submitted that the Durgapur facility is fully compliant with disability access requirements and is equipped with all necessary amenities to accommodate the needs of Respondent No. 3, ensuring that his transfer does not adversely affect him on account of his disability.

5. Conversely, Respondent No. 3, who is present in person along with his counsel, staunchly defends the impugned order passed by the CCPD. He asserts that the CCPD has acted within its jurisdiction under Section 75, read with Section 20(5) of the RPWD Act, 2016, in directing his transfer to be kept in abeyance. Respondent No. 3 places substantial reliance on the judgment of this Court in LPA No. 133/2024⁴, which addressed the scope and applicability of the RPWD Act in situations involving the rights of persons with disabilities. Additionally, he cites the decision of this Court in *Central Bank of India v. Shakuntla Devi & Anr.*⁵ emphasizing that the rights of persons with disabilities are to be safeguarded against

⁴ Titled *Ircon International Ltd. vs. Bhavneet Singh*, 2024 SCC OnLine Del 4952

⁵ 2023 SCC OnLine Del 7107



discriminatory practices, including unjustified transfers. Respondent No. 3 further contends that the absence of a clear and consistent internal transfer policy within the Petitioner Institute raises serious concerns about the legitimacy of the transfer order. He argues that without a formal policy governing transfers, the Petitioner's decision to transfer him to the Durgapur site appears arbitrary and lacks a sound basis. He further emphasizes that his specific functions and responsibilities do not necessitate his presence at the Durgapur site, thereby undermining the Petitioner's rationale for insisting on his transfer. Respondent No. 3 also claims that the actions of the Petitioner Institute amount to harassment and discrimination against him as a person with disabilities, in violation of the protective framework established by the RPWD Act, 2016.

6. The Court has considered the aforementioned contentions. Under Section 75 of the RPWD Act, the CCPD is empowered to inquire, suo motu or otherwise, into complaints regarding deprivation of rights of persons with disabilities and take up such matters with the appropriate authorities for corrective action. However, Section 75 does not confer the authority upon the CCPD to pass binding or adjudicatory orders akin to those issued by a court of law. Instead, the role of the CCPD, as per the statutory framework, is investigatory and recommendatory in nature, aimed at ensuring compliance with the rights and safeguards established under the RPWD Act. Moreover, Section 77 of the Act grants the CCPD certain powers similar to those of a civil court, such as summoning and enforcing the attendance of witnesses, requiring the discovery and production of documents, and receiving evidence on affidavits. However, these powers are procedural and limited to the scope of conducting inquiries and investigations. They do not



extend to adjudicating disputes between an employer and an employee or issuing binding directions regarding service matters, such as the transfer orders which are in question in the present writ petition.

7. In the present case, the Court is seized with the question of whether CCPD has the powers and jurisdiction to pass the impugned order. On this issue, there are several judicial precedents, which guides this Court regarding the powers of CCPD. Therefore, the impugned order passed by the CCPD appears to exceed the statutory jurisdiction conferred upon it by the RPWD Act, as it purports to issue a stay on the transfer order issued by the Petitioner, which is beyond its recommendatory and investigatory mandate. This overreach is not supported by the provisions of the RPWD Act, which do not envisage the CCPD as an adjudicatory body capable of deciding service-related disputes or issuing enforceable orders in such matters.

8. The Judgment of the High Court of Bombay in Writ Petition No. 10307/2015 titled as *Shipping Corporation of India vs. Haripada Shaileshwar Chaterjee*,⁶ also addresses the question of the powers of the Commissioner for Persons with Disabilities under the framework of the RPWD Act. The High Court observed that while the Commissioner possesses the authority to investigate matters related to the rights and entitlements of persons with disabilities and to take them up with the appropriate authorities for corrective action; this authority does not extend to passing orders in the form of mandatory directions that assume the role of an adjudicator. The Court emphasized that the Commissioner cannot decide a *lis* or dispute pertaining to service matters, such as termination orders or, by extension, transfer orders, which fall outside the scope of the



Commissioner's jurisdiction under the RPWD Act.

9. Similarly, the judgment in *Central Bank of India vs. Shakuntala Devi and Anr.*, passed by a Co-ordinate Bench of this Court in *W.P.(C) 4163/2023*, which is also relied upon by Respondent No. 3 and aligns closely with the factual matrix of the present case, also takes the same view. In this matter, the Chief Commissioner for Persons with Disabilities entertained a complaint filed by a disabled employee and proceeded to interfere with a transfer order. The Court, while examining the scheme of the RPWD Act, specifically referred to Section 75 which empowers the Chief Commissioner to investigate complaints and make recommendations to ensure compliance with the rights of persons with disabilities. However, the Court clarified that the Chief Commissioner's powers are limited to examining matters relating to the declaration and protection of the rights of persons with disabilities. The Chief Commissioner does not have the jurisdiction to issue orders that directly interfere with employment decisions such as transfer orders, as these fall under the domain of the employer's administrative prerogatives. The Court further underscored that the purpose of the RPWD Act is to protect the rights and dignity of persons with disabilities, and not to substitute the role of judicial or administrative authorities that have exclusive jurisdiction over service matters. Thus, any interpretation that extends the powers of the Chief Commissioner beyond the recommendatory and advisory scope envisaged by the Act would be contrary to its intent and purpose.

10. It must also be noted that in the case of *State Bank of Patiala vs.*

⁶ 2016 SCC OnLine Bom 9562



Vinesh Kumar Bhasin,⁷ which has been referred to in the *Central Bank of India* judgement, the Apex Court specifically addressed the powers of the Chief Commissioner under the RPWD Act. The Supreme Court held that the Chief Commissioner does not have the authority to pass interim orders, reinforcing the view that the role of the Chief Commissioner is primarily recommendatory and investigatory in nature, rather than adjudicatory. This judgment is directly applicable to the present case, as it underscores the limitations on the powers of the Chief Commissioner, particularly in matters involving employment decisions such as transfers.

11. At this juncture, it is also pertinent to note the parting observations made by the Co-ordinate Bench of this Court in the *Central Bank of India* case, where the impugned order of the Chief Commissioner was modified. In the said case, the Court allowed the bank to independently assess whether the transfer of the respondent was a routine administrative action or a transfer conducted in accordance with the guidelines issued by the Government, or if there were any genuine administrative exigencies justifying the transfer. Additionally, the Court directed that if the bank found the Chief Commissioner's recommendation untenable or decided not to accept it, they must provide a reasoned explanation for such a decision and communicate it to the concerned person with disabilities.

12. Therefore, while the Court acknowledges the reasoning in the *Central Bank of India* case, the final directions issued in that case are not applicable here. This is primarily because, the impugned order of the Chief Commissioner is an interim order, which, as held by the Supreme Court in *State Bank of Patiala vs. Vinesh Kumar Bhasin*, is beyond the Chief

⁷ (2010) 4 SCC 368



Commissioner's jurisdiction under the RPWD Act. The Chief Commissioner does not possess the authority to pass interim orders that effectively halts administrative actions such as transfers, pending further inquiry. Consequently, the interim order in question could not have been validly issued under the scheme of the RPWD Act, as it exceeds the scope of the Chief Commissioner's investigatory and recommendatory powers.

13. In view of the above, the operative portion of the impugned order, to the extent that it directs the Petitioner to keep the transfer order in abeyance, is set aside.

14. With the above directions, the present writ petition is allowed and disposed of along with the pending application(s).

SANJEEV NARULA, J

SEPTEMBER 2, 2024

ab